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REPORT

OF

THE SECRETARY OF THE INTERIOR,

COMMUNICATING

The correspondence with persons claiming to be creditors of the western Cherokees.

February 11, 1852.

Read, referred to the Committee on Indian Affairs, and ordered to be printed.

Department of the Interior,
Washington, February 10, 1852.

Sir: In obedience to a resolution of the Senate of the 22d ultimo, I have the honor to communicate to the Senate, herewith, copies of all the correspondence between this department, including the Office of Indian Affairs, and persons claiming to be creditors of the western Cherokees, since the last session of Congress.

I am, sir, with much respect, your obedient servant,

ALEX. H. H. STUART,
Secretary.

Hon. William R. King,
President of the Senate.

A schedule of papers accompanying the report of the Commissioner of Indian Affairs, in reply to the resolution of the Senate of the United States of January 22, 1852.

No. 1. Letter of A. and J. E. Kendall to the Commissioner of Indian Affairs, March 11, 1851.

No. 2. Letter of Amos Kendall to the Commissioner of Indian Affairs, March 14, 1851.

No. 3. Letter of the Commissioner of Indian Affairs to the Secretary of the Interior, May 9, 1851.

No. 4. Letter of Amos Kendall to the Commissioner of Indian Affairs, March 14, 1851—with papers marked A and B, and therein referred to.

No. 5. Letter of Amos and John E. Kendall to the Commissioner of Indian Affairs, March 14, 1851—with papers marked A, B and C, and therein referred to.

No. 6. Letter of Amos Kendall to the Commissioner of Indian Affairs, April 29, 1851.

No. 7. Letter of John E. Kendall to the Commissioner of Indian Affairs, May 5, 1851.

No. 8. Letter of J. E. Kendall to the Secretary of the Interior, May 29, 1851.

No. 9. Letter of J. E. Kendall to the Secretary of the Interior, May 28, 1851.

No. 10. Letter of Amos Kendall to the Secretary of the Interior, June 19, 1851.

No. 11. Letter of Charles E. Mix to the Secretary of the Interior, July 17, 1851—with the extract therein referred to, annexed.

No. 12. Letter of the Secretary of the Interior to Charles E. Mix, acting Commissioner of Indian Affairs *ad interim*, July 18, 1851.

No. 13. Letter of Charles E. Mix, acting Commissioner of Indian Affairs *ad interim*, to John Drennen, esq., July 21, 1851.

No. 14. Letter to Charles E. Mix, acting Commissioner of Indian Affairs, from Amos Kendall, July 6, 1851.

No. 15. Letter of Charles E. Mix, acting Commissioner of Indian Affairs *ad interim*, to Amos Kendall, July 19, 1851.

Nos. 16, 17 and 18. Letters of Ogden and Luce to the Secretary of the Interior, dated July 24, 27 and 29—with the papers referred to in No. 18, annexed.

No. 19. Letter of John Drennen to the Commissioner of Indian Affairs, August 11, 1851, with the letter of Ogden and Luce therein referred to, and the reply of the Commissioner of Indian Affairs to John Drennen, esq., September 11, 1851.

No. 20. Letter from Joseph M. Starr, president, and others, of the committee appointed to adjudicate claims against the "Old Settlers" or western Cherokees, to Col. John Drennen, August 18, 1851.

No. 1.

WASHINGTON, D. C., *March* 11, 1851.

DEAR SIR: Will you please furnish us with authenticated copies of a series of letters to Hon. James M. Porter, Hon. William Wilkins, and Hon. William L. Marcy, Secretaries of War, and all other papers on file in your office not published by the House of Representatives or Senate, in relation to the claim of the western Cherokees, furnished by us in the prosecution of their claim.

Very respectfully, your obedient servants,

A. & J. E. KENDALL.

Hon. L. LEE, *Commissioner of Indian Affairs.*

No. 2.

OFFICE INDIAN AFFAIRS,
March 15 1851.

GENTLEMEN: In compliance with the request contained in your letter of the 11th instant, I herewith transmit copies of sundry papers, of file in this office, and pointed out by yourselves, relating to the matter of the claims of the western Cherokees, or the Old Settlers. These copies are numbered from one to seventeen, inclusive, and have all been carefully compared with, and are in every respect true transcripts of, the originals of file.

Very respectfully, your obedient servant,

L. LEA, *Commissioner.*

Messrs. A. and J. E. KENDALL.

No. 3.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, May 9, 1851.

SIR: I have the honor to submit for your consideration, in compliance with a request of the Hon. Amos Kendall, the enclosed communications, having reference to a claim presented by him and John E. Kendall, for services rendered, as counsel, to the western Cherokees.

Very respectfully, your obedient servant,

L. LEA, *Commissioner.*

Hon. A. H. H. STUART,
Secretary of the Interior.

No. 4.

WASHINGTON, D. C.,
March 14, 1851.

SIR: Availing myself of the information given by you, of your purpose to solicit the opinion of the Attorney General upon the questions affecting the Cherokee Old Settlers, beyond the Mississippi, which have arisen out of the Cherokee treaty of 1846, and of your kind consent to transmit, for the consideration of that officer, any views I may wish to submit as attorney of the Old Settlers, I have the honor to present the following argument.

Viewed as a mere legal instrument, and construed by the strict rules of law applicable to deeds and other grants and conveyances, as decided by our own courts of justice, the provisions for the benefit of the Old Settlers in that treaty may possibly be found to bear a construction palpably repugnant to the intentions both of the Cherokees and the United States.

The provision made in the treaty for the Old Settlers, in the 4th article, is in the nature of a grant. The parties entitled to the benefit of the grant are specifically described in one passage as "*all those Cherokees west of the Mississippi who emigrated prior to the treaty of* 1835." They appear to be alone the grantees, the "persons entitled" to receive the money.

The 5th article provides, that the "*per capita*" allowance to be paid as aforesaid "*shall not be assignable, but shall be paid directly to the person entitled to it, or to his heirs or legal representatives,*" *&c.* This does not enlarge the grant. It is not a grant to heirs and legal representatives. It merely prescribes a law of descent for this particular class of cases. The grant is to the ancestor. There must be some one "*entitled to it,*" who, being so entitled, has died.

Upon his death, after becoming so entitled, and under no other circumstances, his heirs or legal representatives come in—not *per capita*, like their ancestor, but *per stirpes*, for his share only.

Who are those "entitled to it," upon whose death "heirs and legal representatives" may come in? The 4th article of the treaty answers, "*all those Cherokees west of the Mississippi who emigrated prior to the treaty of* 1835."

But of those emigrants perhaps not one-tenth part were in existence when the treaty of 1846 was ratified; and, therefore, were never "entitled to" any of its benefits. Of course, nothing could descend to their heirs or legal representatives by virtue of the treaty. This is believed to be sound doctrine under our own law. It is unquestionably so under Cherokee law, which recognizes *no heirship in lands.* Their lands are held in common; a Cherokee acquires a common right by being born a Cherokee—a right which dies with him. His children have the same right before his death as afterwards.

The subject of the treaty of 1846, so far as the Old Settlers were concerned, was an interest in lands. No dead Cherokee could be "entitled to" any share in it; no living Cherokee could have acquired any by descent; but every western Cherokee, every old settler and every descendant of an old settler then living, was entitled to an *equal* share, not in right of his ancestor, but in his own right. Not being emigrants prior to the treaty of 1835, nor in this matter heirs or legal representatives of such emigrants, every western Cherokee born west of the Mississippi must, under this construction, be cut off from the benefits of the treaty of 1846 in any character, and all the indemnity granted by the treaty must go to the *survivors of the original emigrants.*

But such could not have been the object of the parties to the treaty. There were few of the original emigrants in existence at that time—probably not more than two hundred. The obligation which made the treaty represented not the surviving emigrants only, but *the whole body of western Chero-*

kees, whether born east or west. Indeed, I am not sure that some of them were not themselves born west of the Mississippi.

They claimed all the Cherokee country west of the Mississippi ceded by the treaties of 1828 and 1833, as the exclusive property, not of the original emigrants, but of the *whole body of their people.* This, on their part, was the entire basis of the negotiation; and it is incredible that they could have intended to convert the common property of several thousands into a fund for the benefit of a few hundreds. Though the United States denied this exclusive right in the Cherokee lands west, they conceded to the western Cherokees, in article 4th, "*a common interest in the lands occupied by the Cherokees east of the Mississippi*," with which they had never parted. That article, after making this concession, provides a consideration to be given for that interest, and concludes thus, viz: "In consideration of the foregoing stipulation on the part of the United States, the western Cherokees or Old Settlers hereby release and quit-claim to the United States all right, title, interest or claim to a common property in the Cherokee lands east of the Mississippi river, and to exclusive ownership to the lands ceded to them by the treaty of 1833 west of the Mississippi, including the outlet west," &c.

"The right, title, interest or claim" thus purchased by the United States was not the exclusive property of the surviving emigrants, but of the whole body of western Cherokees, and it is incredible that the United States could have intended to give the consideration to the surviving emigrants only.

Nothing can be more palpable, than that neither party ever contemplated confining the grant to this narrow compass. A meaning of their language must be looked for more in accordance with the evident scope and object of the transaction.

The claimants were the whole body of western Cherokees, including not only the surviving emigrants, but all persons descended from emigrants. The object of the treaty was to buy out their claims, and the means used must have been intended to be commensurate with the object.

The first expression in any manner specifying the recipients of the grant is the following, which may be found about the middle of the 4th article, viz:

"And then allow to the Old Settlers (or western Cherokees) a sum equal to one-third part of said residuum, to be distributed *per capita* to each individual of *said party* of "Old Settlers" or "western Cherokees."

Now, who constituted this party? Not the surviving emigrants only, but they and their descendants, and the descendants of the deceased emigrants. This "*party*" were called sometimes "Old Settlers" and sometimes "western Cherokees," to distinguish them from the "treaty party," and the "Ross party"—parties into which the eastern Cherokees were divided in consequence of the treaty of 1835.

Here, then, we find a designation of those for whose benefit the grant was made. They are the *party* called and known as "Old Settlers," or "western Cherokees;" and that this party, like the other two, included parents, children, ancestors and descendants, is too obvious to require an argument.

In the beginning of the fifth article the following language is employed, viz: "It is mutually agreed, that the *per capita* allowance to be given to the western Cherokees or Old Settlers, upon the principle above stated, shall be held in trust by the government of the United States, and paid out *to each* *individual belonging to that party*, or head of a family, or his legal representatives."

Now, "who" belonged to that party? Not the surviving emigrants only, but also the descendants of all the emigrants, dead or alive.

The clause in the fourth article, therefore, which at first blush seems to confine the grant to those "who emigrated prior to the treaty of 1835," must receive a construction consistent with the preceding part of the same article, as well as the corresponding provision in the fifth article. A recurrence to the facts of the case will at once suggest such a construction. Cherokee emigration to the country west of the Mississippi commenced about 1790, and may be said to have continued until about 1840. It was necessary to designate some period up to which emigrants should be considered of the western Cherokee party, and after which they should not be so considered. There was, in fact, some doubt whether emigrants under the treaty of 1828, having received all its benefits, ought to be considered western Cherokees, entitled to a portion of the indemnity; but it was finally determined that all emigrants prior to the treaty of 1835, and of course their descendants, should be admitted on the same footing. The object of this clause, therefore, was simply to define who should and who should not be considered as of the "party" called "Old Settlers" or "western Cherokees." Mark its language: "It is hereby further understood and agreed, that *the principle above defined* shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835;" and by embracing them it embraced their descendants, altogether constituting the "party" called "Old Settlers" or "western Cherokees."

This view of the subject, (which I have no doubt is that entertained by the parties to the treaty,) lets in every living emigrant prior to the treaty of 1835, and every descendant of an emigrant, whether his ancestor be dead or alive, as a *per capita* claimant. These all belong to the "party," and *to each individual of said "party"* the fund is "*to be distributed per capita*," by the very words of the treaty.

This construction is sustained by the further consideration, that it makes it unnecessary to put any other than the ordinary construction on the phrase "heirs or legal representatives" in the fifth article. "The persons entitled to it," therein averted to, are the persons constituting the party of "Old Settlers" or "western Cherokees;" and if any one of them die before distribution is made, then his share goes to his heirs or legal representatives.

The only difficult question, it seems to me, is, *when does the right of each individual of the party to the per capita allowance become a vested right, so as to exclude those born afterwards, and in case of his death descend to his heirs or legal representatives?*

Is it upon the ratification of the treaty? Or, upon ascertainment of the amount due? Or, upon the making of the appropriation? Or, upon the taking of the census?

The western Cherokees look upon their interest as virtually an interest in lands until *actually paid for;* and, therefore, they are in favor of considering it a *common* interest to the latest practicable moment. That they consider *the taking of the census.* They think it the duty of the census committee to register every emigrant and descendant of an emigrant, prior to the treaty of 1835, whom they may find in existence at the time of taking the census, as *per capita* claimants under the treaty of 1846. And why should not the United States permit them, in this particular, to construe the treaty for themselves? Who can be wronged or injured by it? Indeed, I am not sure that this whole question does not virtually rest with the census committee.

The 5th article of the treaty provides for their appointment and prescribes their duty in the following words, viz:

"And it is further agreed, that a committee of five persons shall be appointed by the President of the United States from the party of 'Old Settlers,' *whose duty it shall be*, in conjunction with an agent of the United States, *to ascertain what persons are entitled to the per capita allowance* provided for in this and the preceding article."

Is not this the tribunal which is to decide what persons are entitled to the *per capita* allowance? If not, where else is this authority vested? Is it in the United States, or any branch, department or office of their government? They are but a party to the treaty. Is it in the party called "Old Settlers," their council, or headmen? They are also but a party to the treaty. This *committee* is in the nature of a *joint commission*, in which both parties are represented; but the United States concede that the western Cherokees are alone interested in the decisions of the committee, by allowing them *five members to one.* And who is authorized to call in question the conclusions of this committee? Does the treaty provide for an appeal to any higher authority? Must not the money be paid upon such list as may be made out by them, and will not such payment be a complete fulfilment of the treaty on the part of the United States? Who can call it in question? Not the western Cherokees, collectively or individually; for this is *their own* tribunal, composed mainly of their own people, by whose decisions they have bound themselves to abide, and are willing to abide.

All knowledge I have of the instructions heretofore given by the Indian Office, to which the western Cherokees object, is derived from a letter from Colonel Drennen to the Cherokee agent, dated December 17, 1850, and published in the Cherokee Advocate of the 14th January, 1851, which I herewith transmit.

In that letter the position is taken "that all those Cherokees west of the Mississippi river, who were alive at the date of the treaty of 1835, are entitled to the *per capita* of the treaty of 1846 if now alive; or in case of their death, then their heirs or legal representatives are entitled to what would have been their share if alive."

This position can be maintained only by showing that the right to *per capita* money in question *became a vested right in* 1835, in the face of the fact that it originated in the treaty of 1846, *eleven years afterwards!* It was this treaty, as its context shows, which changed the common right in lands to a common right in money; and whether that common right has even now been so sacred as to vest a separate right in any individual, is one of the questions to be considered. It is sufficient for my argument on this point to say, that so far from the western Cherokees relinquishing their common right to the lands east of the Mississippi in 1835, neither they nor the United States supposed they had any, and that right was first recognised in the treaty of 1846; and after being recognised, was converted into a pecuniary interest.

But let us examine for a moment the practical operation of the principle adopted in the instructions. Admit for the sake of the argument that this right to *per capita* money became in 1835 a vested right in "those Cherokees west of the Mississippi river who were alive in 1835," so that in case of their death it must descend to their heirs and legal representatives.

Some of them have died leaving no heirs or legal representatives. Who shall take their share?

Some of them have died leaving heirs and legal representatives, a portion of whom were born prior to the treaty of 1835, and a portion of them afterwards.

The former must come in for a full share in their own right, and also for a distributive portion of their father's share, while the latter would take a distributive share only.

Some died leaving a single heir born before 1835. He must have two shares, one in his own right and the other as heir to his father.

Not only the father but the sons of either class may have died, leaving heirs, also, whose interests derived from their fathers and grandfathers will have to be traced out.

The difficulties in executing the instructions would be endless; and after all, they are not in accordance with the language of the treaty which is quoted to sustain them.

The treaty, according to the quotation, extends its benefits to "all those Cherokees west of the Mississippi river who *emigrated* prior to the treaty of 1835."

The instructions propose to extend them to "all those Cherokees west of the Mississippi river *who were alive at the date of the treaty of* 1835."

The quotation from the treaty embraces all *actual emigrants*, and nobody else; that from the instructions embraces only such emigrants as were then alive, but it includes also the descendants of both the living and the dead who were then in existence.

Is there not just as much reason for letting in descendants born *after* 1835 as *before?* And would it not be more consistent with the quotation from the treaty, and just as reasonable, to consider the right to *per capita* money as vested in *original emigrants only*, whether alive in 1835 or not, and let in their descendants *only as heirs or legal representatives?*

This would at least avoid the invidious distinction between those born in the west before and after the treaty of 1835. The error in the instructions, I respectfully suggest, has grown out of mistaking a provision designed only to draw the line between those emigrants who, with their descendants, were entitled to be considered western Cherokees for the purposes of the treaty, and those who were not, for a description of the grantees of the treaty entitled to all its benefits.

If regard be had to the preceding and subsequent clauses presenting the *whole* "party of Old Settlers or western Cherokees," as the beneficiaries of the treaty, all difficulty vanishes, and the different portions of the treaty bearing on the subject become consistent and intelligible.

The conclusions at which I arrive, are, therefore, as follows, viz:

1. That the grant contained in the treaty of 1846, as an indemnity to the western Cherokees for their interest in the Cherokee country east of the Mississippi, *is a common fund*, to be distributed equally among all the individuals who compose that party, irrespective of the time or place of their birth, except that they or their ancestors must have emigrated to the country west of the Mississippi prior to the treaty of 1835.

2. That the indemnity money remains a common fund until the number

of those entitled to receive it, and the amount due to each, is finally obtained.

3. That the duty and power of ascertaining and deciding who are to be considered western Cherokees, entitled to participate in this fund, belongs exclusively and finally to the census committee.

4. That the phrase, "heirs and legal representatives," is to be understood in the ordinary acceptation, and applies only to cases where the amount due to the ancestor may have been ascertained but not paid prior to his death.

But if there be any doubt on the subject, it seems to be true policy to accede to the views of the Indians, who are said to be nearly unanimous.

For those views as stated by the census committee themselves, I respectfully refer to their letter of the 8th January last, to George Butler, esq., Cherokee agent, published in the Cherokee Advocate of the 14th.

I enclose also a copy of the treaty of 1846, with the passages referred to in this argument marked for the more convenient reference.

With high consideration, your obedient servant,

AMOS KENDALL,
Attorney for the western Cherokees.

Hon. Luke Lea,
Commissioner of Indian Affairs.

[A—referred to in No. 4.]

Treaty between the United States of America and the Cherokee Nation, concluded 6th August, 1846; ratified 17th August, 1846.

JAMES K. POLK,
PRESIDENT OF THE UNITED STATES OF AMERICA.

To all and singular to whom these presents shall come, greeting:

Whereas a treaty was made and concluded at Washington, in the District of Columbia, on the sixth day of August, one thousand eight hundred and forty-six, between the United States of America, by their commissioners, Edmund Burke, William Armstrong, and Albion K. Parris; and John Ross, principal chief of the Cherokee Nation, David Vann, William S. Coody, Richard Taylor, T. H. Walker, Clement V. McNair, Stephen Foreman, John Drew, and Richard Field, delegates duly appointed by the regularly constituted authorities of the Cherokee nation; George W. Adair, John A. Bell, Stand Watie, Joseph M. Lynch, John Huss, and Brice Martin, a delegation appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as the "treaty party;" John Brown, Captain Dutch, John L. McCoy, Richard Drew, and Ellis Phillips, delegates appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as "Western Cherokees," or Old Settlers:

And whereas, said treaty having been submitted to the Senate for its constitutional action thereon, the Senate did, on the eighth day of August, one thousand eight hundred and forty-six, advise and consent to the ratification of the same with certain amendments:

And whereas the said Cherokee Nation, by their principal chief and delegates aforesaid, the said "treaty party" of the Cherokee tribe of Indians, and the said "Western Cherokees," or Old Settlers, by their delegates aforesaid, did, on the thirteenth day of August, one thousand eight hundred and forty-six, give their free and voluntary assent to the amendments made by the Senate in the resolution aforesaid; which treaty, resolution of the Senate making the amendments to said treaty, and the assent of the said principal chief and delegates of the Cherokee nation, and delegates of the "treaty party," and "Western Cherokees," or Old Settlers, are in the words following, to wit:

Articles of a treaty made and concluded at Washington, in the District of Columbia, between the United States of America, by three commissioners, Edmund Burke, William Armstrong, and Albion K. Parris, and John Ross, principal chief of the Cherokee nation, David Vann, William S. Coody, Richard Taylor, T. H. Walker, Clement V. McNair, Stephen Foreman, John Drew, and Richard Field, delegates duly appointed by the regularly constituted authorities of the Cherokee nation; George W. Adair, John A. Bell, Stand Watie, Joseph M. Lynch, John Huss, and Brice Martin, a delegation appointed by and representing that portion of the Cherokee tribe of Indians known and recognised as the "treaty party:" John Brown, Captain Dutch, John L. McCoy, Richard Drew, and Ellis Phillips, delegates appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as "Western Cherokees," or "Old Settlers."

Whereas serious difficulties have for a considerable time past existed between the different portions of the people constituting and recognised as the Cherokee Nation of Indians, which it is desirable should be speedily settled, so that peace and harmony may be restored among them; and whereas certain claims exist on the part of the Cherokee Nation, and portions of the Cherokee people, against the United States; therefore, with a view to the final and amicable settlement of the difficulties and claims before mentioned, it is mutually agreed by the several parties to this convention as follows, viz:

ARTICLE I.—That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit: and a patent shall be issued for the same, including the eight hundred thousand acres purchased, together with the outlet west, promised by the United States, in conformity with the provisions relating thereto, contained in the third article of the treaty of 1835, and in the third section of the act of Congress approved May 28th, 1830, which authorizes the President of the United States, in making exchanges of lands with the Indian tribes, "to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same."

ARTICLE II.—All difficulties and differences heretofore existing between the several parties of the Cherokee Nation are hereby settled and adjusted, and shall, as far as possible, be forgotten and forever buried in oblivion.

All party distinctions shall cease, except so far as they may be necessary to carry out this convention or treaty. A general amnesty is hereby declared. All offences and crimes committed by a citizen or citizens of the Cherokee Nation, against the nation, or against an individual or individuals, are hereby pardoned. All Cherokees who are now out of the nation are invited and earnestly requested to return to their homes, where they may live in peace, assured that they shall not be prosecuted for any offence heretofore committed against the Cherokee Nation, or any individual thereof. And this pardon and amnesty shall extend to all who may now be out of the nation, and who shall return thereto on or before the 1st day of December next. The several parties agree to unite in enforcing the laws against all future offenders. Laws shall be passed for equal protection, and for the security of life, liberty and property, and full authority shall be given by law, to all or any portion of the Cherokee people, peaceably to assemble and petition their own government, or the government of the United States, for the redress of grievances, and to discuss their rights. All armed police, light horse, and other military organization, shall be abolished, and the laws enforced by the civil authority alone.

No one shall be punished for any crime or misdemeanor, except on conviction by a jury of his country, and the sentence of a court duly authorized by law to take cognizance of the offence. And it is further agreed, all fugitives from justice, except those included in the general amnesty herein stipulated, seeking refuge in the territory of the United States, shall be delivered up by the authorities of the United States to the Cherokee Nation for trial and punishment.

Article III.—Whereas certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835, for rents under the name of improvements and spoliations, and for property of which the Indians were dispossessed, provided for under the 16th article of the treaty of 1835; and whereas the said claims have been paid out of the $5,000,000 fund; and whereas said claims were not justly chargeable to that fund, but were to be paid by the United States, the said United States agree to reimburse the said fund, the amount thus charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people, as provided in the 9th article of this treaty; and whereas a further amount has been allowed for reservations under the provisions of the 13th article of the treaty of 1835, by said commissioners, and has been paid out of the said fund, and which said sums were properly chargeable to, and should have been paid by the United States, the said United States further agree to reimburse the amounts thus paid for reservations to said fund; and whereas the expenses of making the treaty of New Echota were also paid out of said fund, when they should have been borne by the United States, the United States agree to reimburse the same, and also to reimburse all other sums paid to any agent of the government, and improperly charged to said fund; and the same also shall form a part of the aggregate amount to be distributed to the Cherokee people, as provided in the 9th article of this treaty.

Article IV.—And whereas it has been decided by the board of commissioners recently appointed by the President of the United States to examine and adjust the claims and difficulties existing against and between the Cherokee people and the United States, as well as between the Cherokees themselves, that under the provisions of the treaty of 1828, as well as in conformity with the general policy of the United States in relation to the Indian tribes, and the Cherokee Nation in particular, that that portion of the Cherokee people known as the "Old Settlers," or "Western Cherokees," had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of, and to be the home for, the whole nation, including as well that portion then east, as that portion then west of the Mississippi; *and whereas the said board of commissioners further decided that, inasmuch as the territory before mentioned became the common property of the whole Cherokee nation by the operation of the treaty of* 1828, *the Cherokees then west of the Mississippi, by the equitable operation of the same treaty,* ACQUIRED A COMMON INTEREST IN THE LANDS OCCUPIED BY THE CHEROKEES EAST OF THE MISSISSIPPI RIVER, *as well as in those occupied by themselves west of that river, which interest should have been provided for in the treaty of* 1835, *but which was not*, except in so far as they, as a constituent portion of the nation, retained, in proportion to their numbers, a common interest in the country west of the Mississippi, and in the general funds of the nation; and therefore they have an equitable claim upon the United States for the value of that interest, whatever it may be: Now, in order to ascertain the value of that interest, it is agreed that the following principle shall be adopted, viz: all the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to five million six hundred thousand dollars, (which investments and expenditures are particularly enumerated in the 15th article of the treaty of 1835,) to be first deducted from said aggregate sum, thus ascertaining the residuum or amount which would, under such marshalling of accounts, be left for *per capita* distribution among the Cherokees emigrating under the treaty of 1835, including all extravagant and improper expenditures, and *then allow to the Old Settlers (or Western Cherokees) a sum equal to one-third part of said residuum, to be distributed per capita to each individual of said party of "Old Settlers" or "Western Cherokees."* It is further agreed that so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an eastern Cherokee, to be charged to the aggregate fund of five million six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the 8th article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted. And as it affects the settlement with the western Cherokees, there shall be no deduction from the fund before mentioned, in consideration of any payments which may hereafter be made out of said fund; *and it is hereby further understood and agreed, that the principle above defined shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of* 1835.

In the consideration of the foregoing stipulation on the part of the United States, the "Western Cherokees" or "Old Settlers" hereby release and quit-claim to the United States all right, title, interest, or claim they may have to a common property IN THE CHEROKEE LANDS EAST OF THE MISSISSIPPI RIVER, *and to exclusive ownership to the lands ceded to them by the treaty of* 1833 *west of the Mississsppi, including the outlet west,* consenting and agreeing that the said lands, together with the eight hundred thousand acres ceded to the Cherokees by the treaty of 1835, shall be and remain the common property of the whole Cherokee people, themselves included.

Article V.—*It is mutually agreed that the per capita allowance to be given to the "Western Cherokees" or "Old Settlers," upon the principle above stated, shall be held in trust by the government of the United States, and paid out to each individual belonging to that party or head of family, or his legal representatives. And it is further agreed, that the per capita allowance to be paid as aforesaid shall not be assignable, but shall be paid directly to the person entitled to it, or to his heirs or legal representatives,* by the agent of the United States authorized to make such payments.

And it is further agreed that a committee of *five persons* shall be appointed by the President of the United States, from the party of "Old Settlers," whose duty it shall be, in conjunction with an agent of the United States, to ascertain what persons are entitled to the *per capita* allowance provided for in this and the preceding article.

Article VI.—And whereas many of that portion of the Cherokee people known and designated as the Treaty Party have suffered losses and incurred expenses in consequence of the treaty of 1835, therefore, to indemnify the Treaty Party, the United States agree to pay to the said Treaty Party the sum of one hundred and fifteen thousand dollars, of which the sum of five thousand dollars shall be paid by the United States to the heirs or legal representatives of Major Ridge, the sum of five thousand dollars to the heirs or legal representatives of John Ridge, and the sum of five thousand dollars to the heirs or legal representatives of Elias Boudinot, and the balance, being the sum of one hundred thousand dollars, which shall be paid by the United States, in such amounts and to such persons as may be certified by a committee to be appointed by the Treaty Party, and which committee shall consist of not exceeding five persons, and approved by an agent of the United States, to be entitled to receive the same for losses and damages sustained by them, or by those of whom they are the heirs or legal representatives: *Provided*, That out of the said balance of one hundred thousand dollars the present delegation of the Treaty Party may receive the sum of twenty-five thousand dollars, to be by them applied to the payment of claims and other expenses. And it is further provided that if the said sum of one hundred thousand dollars should not be sufficient to pay all the claims allowed for losses and damages, that then the same shall be paid to the said claimants *pro rata*, and which payments shall be in full of all claims and losses of the said Treaty Party.

Article VII.—The value of all salines, which were the private property of individuals of the Western Cherokees, and of which they were dispossessed, provided there be any such, shall be ascertained by the United States agent and a commissioner to be appointed by the Cherokee authorities; and should they be unable to agree, they shall select an umpire whose decision shall be final, and the several amounts found due shall be paid by the Cherokee Nation, or the salines returned to their respective owners.

Article VIII.—The United States agree to pay to the Cherokee Nation the sum of two thousand dollars for a printing press, materials, and other property destroyed at that time; the sum of five thousand dollars, to be equally divided among all those whose arms were taken from them previous to their removal west by order of an officer of the United States; and the further sum of twenty thousand dollars in lieu of all claims of the Cherokee Nation, as a nation, prior to the treaty of 1835, except all lands reserved, by treaties heretofore made for school funds.

Article IX.—The United States agree to make a fair and just settlement of all moneys due to the Cherokees, and subject to the *per capita* division under the treaty of 29th December, 1835, which said settlement shall exhibit all money properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spoliations, removal, and subsistence, and commutation therefor, debts and claims upon the Cherokee nation of Indians, for the additional quantity of land ceded to said nation; and the several sums provided in the several articles of the treaty to be invested as the general funds of the nation and, also, all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of six million six hundred and forty-seven thousand and sixty-seven dollars, and the balance thus found to be due shall be paid over *per capita*, in equal amounts, to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835, and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto.

Article X.—It is expressly agreed that nothing in the foregoing treaty contained, shall be so construed as in any manner to take away or abridge any rights or claims which the Cherokees now residing in States east of the Mississippi river had, or may have, under the treaty of 1835 and the supplement thereto.

Article XI.—Whereas the Cherokee delegations contend that the amount expended for the one year's subsistence, after their arrival in the west, of the eastern Cherokees, is not properly chargeable to the treaty fund, it is hereby agreed that that question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee funds: and if by the Cherokees, then to say, whether the subsistence shall be charged at a greater rate than thirty-three and thirty-three one hundredths dollars per head; and also the question, whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date and at what rate per annum.

Article XII.—The western Cherokees, called "Old Settlers," in assenting to the general provisions of this treaty, in behalf of their people, have expressed their fixed opinion that, in making a settlement with them upon the basis herein established, the expenses incurred for the removal and subsistence of the Cherokees after the 23d day of May, 1838, should not be charged upon the five millions of dollars allowed to the Cherokees for their lands under the treaty of 1835, or on the fund provided by the third article of the supplement thereto; and that no part of the spoliations, subsistence, or removal, provided for by the several articles of said treaty and the supplement thereto, should be charged against them in their settlement for their interest in the Cherokee country east and west of the Mississippi river. And the delegation of "Old Settlers," or "Western Cherokees," propose that the question shall be submitted with this treaty to the decision of the Senate of the United States, of what portion, if any, of the expenditures made for removal, subsistence, and spoliations, under the treaty of 1835, is properly and legally chargeable to the five million fund. And they will abide by the decision of the Senate.

ARTICLE XIII.—This treaty, after the same shall be ratified by the President and Senate of the United States, shall be obligatory on the contracting parties.

In testimony whereof, the said Edmund Burke, William Armstrong, and Albion K. Parris, commissioners as aforesaid, and the several delegations aforesaid, and the Cherokee nation and people, have hereunto set their hands and seals at Washington aforesaid, this sixth day of August, in the year of our Lord one thousand eight hundred and forty-six.

Edmund Burke, [seal.]
Wm. Armstrong, [seal.]
Albion K. Parris, [seal.]

Delegation of the Government party.

Jno. Ross, [seal.]
W. S. Coodey, [seal.]
R. Taylor, [seal.]
C. V. McNair, [seal.]
Stephen Foreman, [seal.]
John Drew, [seal.]
Richard Fields, [seal.]

Delegation of the Treaty party.

Geo. W. Adair, [seal.]
J. A. Bell, [seal.]
S. Watie, [seal.]
Joseph M. Lynch, [seal.]
John Huss, his x mark. [seal.]
Brice Martin, [seal.]
(by J. M. Lynch, his attorney.)

Delegation of the Old Settlers.

Jno. Brown, [seal.]
Wm. Dutch, his x mark. [seal.]
John L. McCoy. [seal.]
Richard Drew, his x mark. [seal.]
Ellis F. Phillips, [seal.]

In the presence of—

Joseph Bryan, of Alabama,
Geo. W. Paschal,
John P. Wolf, (secretary of board,)
W. S. Adair,
Jno. F. Wheeler.

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES—*August* 8, 1846.

Resolved, (two-thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the articles of a treaty made and concluded at Washington, in the District of Columbia, the sixth day of August, in the year of our Lord one thousand eight hundred and forty-six, between the United States of America by three commissioners, Edmund Burke, William Armstrong, and Albion K. Parris; and John Ross, principal chief of the Cherokee Nation, David Vann, William S. Coodey, Richard Taylor, T. H. Walker, Clement F. McNair, Stephen Foreman, John Drew, and Richard Field, delegates duly appointed by the regularly constituted authorities of the Cherokee Nation; Geo. W. Adair, John A. Bell, Stand Watie, Joseph M. Lynch, John Huss, and Brice Martin, a delegation appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as the "Treaty party;" John Brown, Captain Dutch, John L. McCoy, Richard Drew, and Ellis Phillips, delegates appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as "Western Cherokees" or "Old Settlers," with the following

Amendments.

Strike out of the fifth article the following words: "First deducting therefrom the sum of fifty thousand dollars to be paid to the delegation of that portion of the Cherokee people who are parties to the treaty, to defray the expenses of prosecuting their claims against the government of the United States, including the late Captain John Rogers."

Strike out the twelfth article of the treaty.

Attest: ASBURY DICKINS,
Secretary.

We, John Ross, principal chief of the Cherokee Nation, David Vann, William S. Coody, Richard Taylor, T. H. Walker, Clement F. McNair, Stephen Foreman, John Drew, and Richard Field, delegates duly appointed by the regularly constituted authorities of the Cherokee Nation; George W. Adair, John A. Bell, Stand Watie, Joseph M. Lynch, John Huss, and Brice Martin, a delegation appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as the "Treaty party;" John Brown, Captain Dutch, John L. McCoy, Richard Drew, and Ellis Phillips, delegates appointed by, and representing that portion of the Cherokee tribe of Indians known and recognised as "Western Cherokees," or "Old Settlers," do hereby give our free and voluntary assent to the foregoing amendments made by the Senate of the United States, on the eighth day of August, one thousand eight hundred and forty-six, to the treaty concluded by us with Edmund Burke, William Armstrong, and Albion K. Parris, commissioners, acting for and on behalf of the United States, on the sixth day of August, one thousand eight hundred and forty-six, the same having been submitted and fully explained to us by the Secretary of War and Commissioner of Indian Affairs on the part of the United States.

In testimony whereof, we have hereunto set our hands and affixed our seals, respectively, at Washington, District of Columbia, the thirteenth day of August, one thousand eight hundred and forty-six.

Jno. Ross, [seal.]
David Vann, [seal.]
W. S. Coodey, [seal.]
R. Taylor, [seal.]
T. Walker, [seal.]

C. V. McNair, [seal.]
Stephen Foreman, [seal.]
(by Jno. Ross.)
John Drew, [seal.]
Richard Fields, [seal.]
Geo. W. Adair, [seal.]
John A. Bell, [seal.]
Stand Watie, [seal.]
J. M. Lynch, [seal.]
Jno. Huss, his x mark, [seal.]
Brice Martin, [seal.]
(by J. M. Lynch,)
Jno. Brown, [seal.]
Wm. Dutch, his x mark, [seal.]
ohn L. McCoy, [seal.]
Richard Drew, his x mark, [seal.]
Ellis F. Phillips, [seal.]

Witnesses present—
Spencer Jarnagin, U. S. S.
H. Miller,
N. Quackenbush,
W. Medill.

Now, therefore, be it known that I, JAMES K. POLK, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the eighth day of August, one thousand eight hundred and forty-six, accept, ratify and confirm the said treaty, with the amendments set forth in the said resolution.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, having signed the same with my hand.

Done at the city of Washington, the seventeenth day of August, in the [L. S.] year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States the seventy-first.

JAMES K. POLK.

By the President:

JAMES BUCHANAN,
Secretary of State.

[B—referred to in No. 4.]

TALEQUAH, C. N., *January* 8, 1851.

SIR: Your answer to our communication of the 6th instant, requesting your co-operation with us, to take the census of the Old Settlers, or western Cherokees, has been received, in which you express your readiness to comply with our wishes, in accordance to the enclosed instructions only, given you by Colonel Drennen, superintendent. We regret to state to you that the committee cannot act in accordance to those instructions, because the Old Settler Cherokees are unanimously opposed to taking the census, upon the principle proposed to be adopted. Their opposition to include the dead was most signally manifested by a vote taken at a meeting called, and held at the mouth of Illinois river, in August last, by the late William Butler, esq., deceased. And the same opposition still existed at the recent meeting held at James Mackey's, Illinois river, on the 10th of December last, by Colonel Drennen, superintendent, at which time the people, through their committee, agreed to receive their moneys upon the following conditions: "I hereby notify you, (Colonel Drennen) that the Old Settlers, or western Cherokees, agree to receive the same, subject to distribution among them by the award of the committee of five, appointed to take the census, who are hereby further instructed to make the registration of the Old Settlers or western Cherokees, in accordance with said 4th, 5th and 9th articles of said treaty, and the instructions of the Commissioner of Indian Affairs to Colonel Drennen, superintendent, to the general satisfaction of the Old Settlers or western Cherokees, to the best of their skill, knowledge and ability." The quotation above given reconciled the Old Settlers to receive their moneys from Colonel Drennen, from which it appears clear and manifest that they agreed to have the census taken "to the general satisfaction of the Old Settlers or western Cherokees," based upon the 4th, 5th and 9th articles of said treaty, so far as those articles of the treaty are or may be applicable in the distribution of the per capita money, and the instructions of the Commissioner of Indian Affairs to Colonel Drennen, superintendent, which refer to the above articles of the treaty. Hence the census cannot be taken to the general satisfaction of the Old Settlers or western Cherokees, which required the enumeration of the dead; which instructions are based upon the 4th article of the treaty of 1846, viz: "And it is hereby further understood and agreed, that the principle above defined shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835." The grounds of dissatisfaction of the Old Settler Cherokees, arises from the peculiar construction placed upon the said 4th article of the treaty; which stipulation could only have been intended as drawing a line of distinction between the western and eastern Cherokees, there being no expression used from which it might be justly inferred that all those who emigrated prior to the treaty of 1835, in case of death, should be entitled to an investment of money, which was not recognised by the Government of the United States until in 1846.

From a deep implanted principle, imbibed from the custom adopted by their forefathers, and more recently from their written laws, which establish the peculiar tenure in which they hold investments in lands, we hope that the money will be paid to them in accordance to their wishes. The land is common or national property, to which no individual can hold a claim longer than life; after which their right reverts to the common stock. It is clearly admitted in said 4th article of the treaty of 1846, that the per capita money originates in the interest which was held by the Old Settlers to the lands east and west of the Mississippi, and hence moneys arising from this source remain as common property, until distributed by taking the census. They being the recipients of the money, they can see no good reason why the Government should wish to pay them in a manner contrary to their laws and customs; the Government of the United States having no further interest than to pay a just debt. We hold it to be a good principle in which the party is allowed the right of construing whose rights are affected by it. If the proposition be true, that all those Cherokees who emigrated prior to the treaty of 1835 are entitled to per capita, then the time is entirely indefinite from which to date the taking of the census; it might be extended back to twenty or thirty years, or to the first emigrant Cherokees to the west; which would result in insurmountable difficulties, outreaching the means of justice.

In connexion with the preceding article, the 5th article of said treaty stipulates that the per capita money "shall be paid directly to the person entitled to it, or his heirs or legal representatives, by the agent of the United States authorized to make such payments." The same principle would occur in the reasons already given to the 4th article of the treaty, the effect of including the dead, which would trace the heirship or genealogy to the first emigrant Cherokees, causing an interminable difficulty. But, if regulated by our laws and customs, no individual can claim a separate and exclusive investment until the enumeration is made, at which time only can persons designated in the enumeration claim an exclusive share in the investment; hence, in his death, it is provided that it be paid directly to his heirs or legal representatives. And, for instance, if the lands we now hold in common were to be divided equally among us, there would be no provision made for the dead, according to the economy of our laws.

The same principle may also be urged with force in the payment of the per capita, as in the payment of the Indian annuities among the Indian nations, who still keep up the practice of distributing their annuities; they invariably pay it to the living, excluding the dead.

It has been represented to the department of Indian Affairs, that great dissatisfaction prevailed among the Old Settler Cherokees in regard to excluding the dead. Those representations were made by an individual unauthorized, either by the nation which he then represented at Washington, or by any considerable portion of the Old Settler Cherokees, to make such complaints.

We would further state that a difference of opinion exists with the officers of the Government of the United States, in regard to the proper construction to be placed on those articles of the treaty of 1846 which have reference to the payment of the per capita money, for information upon which we would refer you to the instructions issued to the general agents in reference to taking the census of the Old Settler Cherokees, viz: to R. C. S. Brown, esq., in 1849; to William Butler, esq., deceased, dated the 5th of June, 1850, by Orlando Brown, esq., Commissioner of Indian Affairs; to George Butler, esq., dated 17th of December, 1850, by Col. Drennen, superintendent. From the instructions to which we refer, it appears that they fix upon different dates from which to commence taking the census. Hence it is a fair inference to conclude that the treaty has fixed upon no definite period.

In conclusion, the committee would assure the government that no difficulty would arise in payment of the per capita money to the Old Settler Cherokees by adopting the principles we have set forth, and we can see no good reasons why the money should be longer withheld. We would further request, if this difficulty cannot be settled or reconciled between us and Col. Drennen, who has been charged with the payment of this mothe subject be referred to the proper department at Washington city, with the least possible delay.

With respect, we remain your obedient servants,

JAMES MACKEY,
TAKES-TAS-KEE,
WILLIAM DREW,
JOHN G. HARNAGE,
THOS. L. ROGERS,
Committee.

To GEORGE BUTLER, Esq., *Cherokee Agent.*

No. 5.

WASHINGTON, D. C., *March* 14, 1851.

SIR: The fund provided by the treaty of 1846 for the indemnity of the western Cherokees, being still within the control of the government, and having an incontestable and well-defined claim upon it, we deem it our duty, not in any unkind or unthankful spirit towards the Indian Office, to ask that the money due to us may be paid to us out of said fund before distribution, and to protest against the payment to the western Cherokees of the one-twentieth part of those moneys, being the interest assigned to us for services rendered prior to the ratification of the treaty.

For a history of our claim, see Executive Document No. 28, Senate, second session thirtieth Congress, herewith transmitted.

A copy of our contract may be found on pages six to nine, and a history of proceedings on pages fifteen to twenty. We transmit also an "exposition," containing some additional views, and a copy of a report of the Committee on Indian Affairs in the Senate, No. 180, first session thirty-first Congress.

These papers supersede the necessity of entering into a further exposition of the subject. A strange case of aggravated wrong could scarcely be made out, and you will perceive that the Senate committee come to the just conclusion that the United States were bound to see those debts paid out of the Cherokee fund, or out of their own treasury.

The question we now wish to submit is, whether the United States, with everybody's eyes open, as to the wrong, (not to use a harsher word) are bound to proceed, through the Indian Office, to the consummation of the wrong, by paying to the Cherokees, individually, moneys which were assigned away by competent authority, and for a valuable consideration, long before the treaty was formed.

The fifth article of the treaty provides, that the *per capita* allowance "*shall not be assignable, but shall be paid directly to the persons entitled to it,*" &c.; and the proviso to the appropriation provides, that "*in no case shall any money hereby appropriated be paid to any agent of said Indians, or any other person or persons than the Indian or Indians to whom it is due.*"

These provisions have evident reference to *individual* Indians, their agents, and claims against *them,* and not to the *whole body,* and claims against them, in *their aggregate capacity.* No individual Indian may assign his portion; and all "that is due" to an individual Indian must be paid directly to himself. But because no individual Indian can, under the treaty, assign away *his share,* does it follow that assignments made on the authority of the *whole body, before even this restriction was imposed*, are to be treated as null and void? Because each individual Indian is to be paid directly all that may be found "*due to him*," does it follow that he is to receive, also, a portion of that which is *due to another*, by the valid assignments of his own duly constituted authorities?

It is not to be presumed that the treaty-making power, or Congress, intended to outrage principles held sacred by all honest men; and if possible, such a construction must be given to their acts as will make them consistent with the vested rights of third parties. We had a vested and well-defined right to one-twentieth part of the western Cherokee indemnity, before the treaty was formed. Could it have been the intention of the United States to unite with the Indians in *committing a fraud upon us, by nullifying that right?* No such thing is to be presumed: on the contrary, a construction of the treaty and the law is to be sought after, which will reconcile the acts of the Government with established law and sound moral principle.

If any argument is to be deduced from the amendment of the Senate to the 4th article of the treaty, it is in favor of our position. We resolutely opposed the insertion of the clause struck out, under the conviction that the fifty thousand dollars would be inadequate to the payment of the just debts of the western Cherokees; and it is more reasonable and respectful to suppose the Senate struck it out for the same reason, than to assume that they intended to unite with the Indians in cheating their counsel out of all compensation. If the succeeding clause, as retained, was consistent with that struck out, it is now consistent with the payment of the just debts of the western Cherokees, to the utmost farthing. And the Cherokees themselves, by their delegation, after the treaty was ratified, recognised *our continued claim* upon their common fund, by an endorsement on our contract, in the following words, viz:

"The undersigned, delegates of the western Cherokees or Old Settlers, being a party to the treaty recently concluded, to put an end to Cherokee difficulties, do hereby authorize and request the Secretary of War to pay the commissions stipulated for in the within contract, out of any moneys which may be appropriated to pay the debts of the Old Settlers, or out of any moneys which may be found due to them under the said treaty, it being our intention that this contract shall be executed in good faith."

This left no party but the United States responsible for any wrong done us, through the construction or misconstruction of the treaty.

The principle on which we rest is not new, and has been recognised by our government from its origin. Without multiplying authorities, permit us to call your attention to one only, in which it is briefly embodied. It is found in the "Opinions of the Attorneys General," pages 1303 and '4. The principle is summed up with great clearness in the concluding portion of the opinion, viz:

"Certainly where an attorney has performed an important service, collected the evidence, and been instrumental in securing a claim which might otherwise have been lost, and where this has been done under the stipulation, or with a *bona fide* understanding, that he was to receive the amount to which he was entitled, directly from the United States, he *has an interest in the fund which the principal himself could not revoke, and which the department is bound to recognise.*"

Much stronger is our case. That case had relation to the attorneys of individual Indians; we are attorneys for a *whole band, or party*. We have a contract, dated long before the treaty or the law now in question, fixing our compensation and stipulating for its payment directly by the United States, "*it being the true intent and meaning of said delegates,*" (such are the words of the contract,) "*that the said A. and J. E. Kendall shall receive five per cent., or one-twentieth part of any and every thing of value which may be granted or appropriated on account of said claims, to be received directly from the United States, without any further act or authority by or from the said Cherokees west.*"

We have, therefore, "*an interest in this fund*" originating prior to the treaty, which the western Cherokees themselves could not revoke, and which the United States are bound to recognise. And is such a construction to be given to the acts of the United States as not only to imply the denial of this obligation, but to involve the guilt of joining with the western Cherokees? Nay, more than that—of *compelling* them to attempt revoking an assignment they had no power to revoke, and for the sole purpose of defrauding out of all compensation the attorneys to whose arduous labors they are indebted for every dollar of the indemnity they are to receive.

Can it be that the treaty-making power or Congress have intended, by any act of theirs, to commit such an outrage?

We have the word of the senator who offered the proviso to the appropriation, that he had in view only to prevent frauds on individual Indians, such as he had seen committed, and not to cut off just claims against the aggregate body, as in our case. And are provisions intended to prevent fraud to be so construed as to produce and protect frauds much more enormous? Designed to *prevent* fraud in one *class* of cases, are they to be applied to *another* class where they can only *produce* fraud?

We therefore come to the following conclusions, viz:

1. That the assignment to us of the twentieth part of the indemnity which might be awarded to the western Cherokees, gave "us an interest in the fund" which they could not revoke with or without the concurrence of the United States, and that any subsequent provision of treaty or act of Congress which purports to do so, if any there be, is in that respect null and void.

2. That inasmuch as the provisions of the treaty and of the act making the appropriation, requiring a *per capita* distribution, are clearly susceptible of a different construction altogether consistent with good faith on the part of the Cherokees, and fair dealing on the part of the United States, they should receive that construction, and be applied only to cases where the claimant presents himself as the agent, creditor or assignee of an individual Cherokee.

3. That, in the language of the Attorney General, the department is "*bound to recognise*" our interest in the fund, and see that we are paid, especially as no one disputes, or can dispute, the justice of our claim.

We therefore respectfully ask at your hands an order to Colonel Drennen, who now has charge of the fund, to pay us the twentieth part thereof without further trouble, including interest thereon as allowed by Congress. If, in consequence of steps already taken, or any other cause, the department hesitates to give such an order, then we must respectfully request that the opinion of the Attorney General may be taken upon the points involved, not doubting that his talent and legal skill will enable him to point out some line of proceeding, consistent at the same time with the rights of the citizen and the obligations of the government.

With high consideration, your obedient servants,

AMOS KENDALL.
JOHN E. KENDALL.

Hon. LUKE LEA,
Commissioner of Indian Affairs.

P. S. In the absence of Colonel Stambaugh, whose claim rests on the same grounds, we respectfully request that the same action may be had in his case as in our own.

[A—referred to in No. 5.]

Report of the Secretary of War, communicating a report of the Commissioner of Indian Affairs, in relation to claims against the Cherokees, under the treaty of August 6, 1846.

WAR DEPARTMENT,
Washington, February 9, 1849.

SIR: I have the honor to submit herewith a report of the Commissioner of Indian Affairs, prepared in compliance with a resolution of the Senate of the 18th ultimo, requiring information in reference to claims made against the Cherokees who were parties to the treaty of August 6, 1846, especially against that portion of the nation called "Old Settlers" or "western Cherokees." It will be perceived that the manuscripts herewith are originals, which the Commissioner requests may be returned to the files of his office, when no longer required for the use of the Senate.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Hon. GEO. M. DALLAS,
President of the Senate.

WAR DEPARTMENT,
Office Indian Affairs, February 8, 1849.

SIR: I have the honor to report upon the resolution of the Senate of the United States of January 18, 1849, which is in the following language, to wit:

"*Resolved,* That the Secretary of War be requested to communicate to the Senate any information that may be within the knowledge of the department in reference to claims made against the Cherokees who were parties to the treaty of August 6, 1846, (especially against that portion of the nation called 'Old Settlers' or 'western Cherokees,') for services or any other aid and assistance rendered the said Cherokees in the prosecution of their claim, which resulted in the treaty aforesaid. If such claims are based upon written contracts, he is requesed to state whether these contracts were made by the duly authorized representatives of the *Cherokees* in their *national* or *aggregate* capacity, for the benefit of those who are made recipients by the treaty in all moneys arising out of the settlement of their claim; and also whether, within the knowledge of the department, such contracts have been fully and faithfully complied with, as far as practicable, by the other parties named in them; and that he will communicate the evidence upon which he bases his opinion, with any papers in the possession of the department, showing the extent of the services rendered and the character of the claims thus made against the moneys which may be awarded the Cherokees under the treaty of August 6, 1846."

With reference to the first general question, I have to state that the only claims made against Cherokees who were parties to the treaty of August 6, 1846, which have been filed in this office, are those of S. C. Stambaugh and Amos and John E. Kendall, esqrs., for services rendered that portion of the nation called "Old Settlers" or "western Cherokees." Those claims are based upon written contracts, made by the duly authorized representatives of the said "Old Settlers" or "western Cherokees," for the benefit of those who are made recipients, by the treaty, of moneys arising out of the settlement of their claim. Copies of these contracts are herewith, marked A and B. Copies of proceedings of conventions of the "Old Settlers" or "western Cherokees," from April, 1842, to July, 1846, and a copy of a certificate of contract with S. C. Stambaugh, esq., by the delegation of said party who signed the treaty of August 6, 1846, are also herewith, marked C.

The files of the department show that the party of Cherokees styled the "government party" were represented before the commissioners who, on the part of the United States, negotiated the treaty of 1846, by Hon. Waddy Thompson; and that the "treaty party" were represented before the same commission by George W. Paschal and Matthew St. Clair Clarke, esqrs. No claim for services, however, appears to have been presented here, by either of these attorneys, against the parties represented by them respectively; but the records show that a draft, drawn by the treasurer of the Cherokee nation on this department in favor of Mr. Thompson for $5,000, and made chargeable to the general funds of the nation, has been paid, in addition to another sum of $5,000, which, it is understood, he received directly from the authorities of the tribe. Whether that amount was on account of services rendered by him for the "government party," or for some other object, was not stated in the treasurer's order, nor do the records or files state the object. There is nothing on file or of record showing the amount which the "treaty party" paid their attorneys, but it has been verbally represented that, from the funds stipulated to be paid to the "treaty party," $7,500 have been paid to Mr. Paschal and $2,500 to Mr. Clarke.

The only counsel or agents known to the department as being engaged in prosecuting the claims of the "Old Settlers," or "western Cherokees," were S. C. Stambaugh, and the Messrs. Kendalls: the former has been acting on behalf of that party since April, 1842, the latter since 12th July, 1843.

The proceedings of the first convention which appears to have been held by the "Old Settlers" for the purpose of petitioning the United States to restore to them the country entered upon by the emigrants under the treaty of 1835-6, or to obtain indemnity for losses and damages sustained by their dispossession, will be found in paper C, pages 1 to 7 inclusive. This convention convened on the 9th and adjourned on the 16th of April, 1842. The third resolution adopted by the convention is in the following words:

"*Resolved,* That a delegation be appointed to proceed to the city of Washington as soon as practicable, to confer with the President of the United States, and petition Congress, if necessary, on the affairs of the western Cherokee nation, and that this delegation be and they are hereby vested with full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; that they have also full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things these, the delegates representing the western Cherokees, are empowered to act definitively and conclusively for the nation, the same as if all their people were personally present.

"Whereupon, the following delegates were unanimously chosen, in pursuance of the above resolution, viz:—John Rogers, James Carey, senior, (or Chicken Cock,) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation."

The fifth resolution is in the following words:

"*Resolved,* That this convention having full and entire confidence in the integrity and ability of Colonel S. C. Stambaugh, now at Fort Gibson, who has had a long and intimate acquaintance with the concerns of our people, they hereby nominate him as counsel to be selected by the delegates in pursuance of the foregoing resolution, and that he be requested to accompany the delegation to Washington."

The same paper (C) contains the proceedings of the conventions held every succeeding year, until the treaty of August, 1846, providing for the settlement of their claims, was concluded; and each convention confirmed the acts and proceedings of those which preceded it. The proceedings, as detailed, are authenticated by the delegation who signed the late treaty, as will be seen by the certificates appended, which confirmed the appointment of S. C. Stambaugh as counsel and agent in April, 1842, and continued by subsequent delegations, as well as that of the Messrs. Kendall. In the certificate of the delegation, (see pages 7 and 8,) made four days after the treaty was signed by them, "they hereby declare, under the authority vested in them, that all contracts or liabilities incurred by them or any of their predecessors, for the benefit of the western Cherokees, in their aggregate capacity, shall be paid out of any moneys which have been or may hereafter be found due to the said western Cherokees, or "Old Settlers;" and the Secretary of War is hereby authorized to cause the same to be paid."

The contracts herein before referred to are the only papers on file in this office purporting to exhibit a claim against the "Old Settlers," or "western Cherokees," in their collective capacity. They are contingent in their character, as the "Old Settlers," as such, have no *national* or *annuity* fund out of which to pay for services or other aid which it might be necessary to procure in the prosecution of their claim.

The files of the department attest the assiduity and ability with which Messrs. Stambaugh and Kendall attended to the duty intrusted to them, and I think it highly probable that the "western Cherokees," or "Old Settlers," are greatly indebted for the stipulations made for their benefit, in the treaty of 1846, to the researches and persevering efforts of their counsel. The evidence upon which I have based my opinion is my own knowledge of the personal exertions of the counsel named, and that shown in the accompanying papers, to wit: Memorial of the western Cherokees, prepared by S. C. Stambaugh, esquire, marked D; Senate document, 29th Congress, 1st session, No. 298, pages 19 to 73 inclusive, being arguments of Messrs. Stambaugh and Kendall in behalf of the western Cherokees; arguments and other papers submitted by the said counsel to the commissioners who negotiated the treaty of 1846, marked E, F, G, H, I, J, K, L, and M; letters of 4th May, 1848, of S. C. Stambaugh, esquire; letter of Messrs. Stambaugh and Kendall, of 8th June, 1848, to the President of the United States; and the memorial of western Cherokees, or "Old Settlers," to the President, of 4th August, 1848.

The accompanying papers—with the exception of the Senate document—belonging to the files of this office, it is respectfully requested that they be returned here, after they shall have been acted upon by the Senate.

Very respectfully, your obedient servant,

W. MEDILL.

A.

Be it known, by these presents, to the Secretary of War, Commissioner of Indian Affairs, and all accounting officers of the United States government, that we, the undersigned delegates, appointed to represent the "Old Settlers," known as the Cherokee nation west of the Mississippi river, under the treaties of eighteen hundred and twenty-eight and eighteen hundred and thirty-three, hereby ratify and approve the appointment sanctioned by Captain John Rogers, John Smith, James Carey and Thomas Wilson, on the sixteenth day of April, one thousand eight hundred and forty-two, of Colonel Samuel C. Stambaugh, as counsel and agent, to prosecute the claims of the western Cherokees; and also concur in the amendments afterwards made to the contract entered into under said appointment by Captain Rogers, Ely F. Phillips and John L. McCoy, on the fifteenth day of July, one thousand eight hundred and forty-three. They, therefore, by virtue of the power in them vested, do hereby continue the appointment of said Stambaugh as counsel and agent for the western Cherokees, or Old Settlers, and authorize and empower him to appear before the honorable Edmund Burke, honorable Albion K. Parris and Major William Armstrong, commissioners appointed by the President of the United States, and organized this 8th day of July, 1846, and before any other tribunal and department of the government of the United States hereafter, on behalf of the said Old Settlers or western Cherokees, until all their claims against, or accounts with the United States, are finally settled.

And for the services already rendered and hereafter to be rendered, the undersigned, as the sole representatives of the said "Old Settlers," pledge the faith of their people to pay, or cause to be paid, to said Samuel C. Stambaugh, the sum of ten thousand dollars, so soon as an arrangement is made with the United States which is acceptable to this delegation; and upon all moneys which may hereafter be obtained for the western Cherokees from the United States, in consequence of the prosecution of their claims since the sixteenth of April, eighteen hundred and forty-two, aforesaid, and upon all moneys which may hereafter be obtained upon the claims now before the government of the United States, above the amount of two hundred thousand dollars, the said Stambaugh is to receive, in addition to the ten thousand dollars, five per cent., (5 per cent.,) as soon as said amount is ascertained or allowed by the United States as due to the said Old Settlers. And it is hereby further agreed, that on account of the long and faithful services rendered by said Samuel C. Stambaugh, and in accordance with the intention of the convention who selected him in April, 1842, it is hereby recommended that he shall receive, in addition to his regular fees herein provided for, the sum of twenty-five hundred dollars, for his expenses in the Cherokee nation and in the city of Washington, attending to the business of their people. Provided, however, that if no treaty or settlement is made which may be accepted by the undersigned delegation, then the said Stambaugh can have no claim whatever against the western Cherokees or Old Settlers on account of his services or expenses.

And the Secretary of War, Commissioner of Indian Affairs, and accounting officer of the United States treasury, are hereby authorized and empowered, and enjoined, to fulfil this contract out of any moneys that may hereafter be found due the Old Settlers aforesaid.

In testimony whereof, we have hereunto placed our hands and seals, this 8th day of July, 1846, at the city of Washington, District of Columbia.

JOHN BROWN,
his
WM. × DUTCH,
mark.
his
RICHARD × DREW,
mark.
E. F. PHILLIPS,
JOHN L. McCOY,
Delegation of Old Settlers.

Acknowledged before us; the words "it is hereby recommended that," inserted before signing.

JOHN ROGERS,
HENRY HOLT.

B.

Whereas the Cherokee Indians who emigrated to the country west of the Mississippi were under the protection and guarantees of treaties between the United States and the Cherokee nation west of the Mississippi, in 1828 and 1833, have claims upon the United States for wrongs done them in the violation of said guarantees, under color of a treaty with the Cherokees east, concluded in December, 1835; and whereas said wrongs have not only deprived them of the lands which were granted and guarantied to them forever, but have put an end to their existence as a separate people, and exposed them to annoyance, oppression, and personal danger, in utter defeat of the main object in view when they consented to abandon the home of their fathers; and whereas they are desirous of making their rights and condition clearly known to the government and people of the United States, in the confidence of receiving at their hands remuneration for the property of which they have been despoiled, and obtaining new guarantees to protect them in their property and persons; and whereas the very wrongs of which they complain have embarrassed every movement, through recognised authorities, to obtain redress, and deprived them of the means necessary to command it; and whereas, at a council held by a number of the chiefs, headmen and councillors of the western Cherokees, or Old Settlers, under the treaty of 1817, convened at the house of Mrs. Nancy Rogers, in the forks of the Verdigris and Grand rivers, on the 9th day of April, 1842, the following proceedings, among others, were had, viz:

"*Resolved,* That a delegation be appointed to proceed to the city of Washington as soon as practicable, to confer with the President of the United States on the affairs of the western Cherokee nation; and that this delegation be, and they are hereby vested with full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; that they have, also, full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things these, the delegates representing the western Cherokees, are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present.

"Whereupon the following delegates were unanimously chosen, in pursuance of the above resolution, viz: John Rogers, James Carey, senior, (or Chicken Cock,) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation:"

And whereas, at another council or convention of chiefs, headmen and councillors of said Cherokees west, held at the house of Mr. Alexander Foreman, mouth of Illinois river, Illinois district, on the 7th day of November, 1842, the following resolutions were adopted, viz:

"*Resolved,* That we agree with and adopt the resolutions and acts entered into by Captain John Rogers and others, on the 16th day of April, 1842.

"*Further resolved,* That John L. McCoy and Ellis F. Phillips be and are appointed as a delegation, to be attached to the number already appointed, to proceed to the city of Washington to faithfully execute and carry out all claims unadjusted on the part of the western Cherokees with the government of the United States:"

And whereas Messrs. Amos and John E. Kendall, acting as agents for claims in the city of Washington, having confidence in the justice of said claims, and in the disposition of the government and people of the United States to make reparation to this much injured people, are willing to undertake the management of their case for a compensation altogether contingent:

Now, therefore, this article of agreement, entered into this 12th day of July, 1843, between Captain John Rogers, John L. McCoy and Ellis F. Phillips, a majority of said delegates, for and on behalf of the said Cherokee nation west, of the one part, and Amos Kendall and John E. Kendall, of the District of Columbia, of the other part, witnesseth: that the said Amos Kendall and John E. Kendall do stipulate and agree, either separately or in conjunction with such other person or persons as have been or may be employed by said Cherokees west, to act as counsel in the prosecution of such claims to final adjustment before the executive departments and the Congress of the United States, viz: to prepare and submit to the Secretary of War a full statement in writing of the nature and extent of such claims, and use all proper means to obtain from him a favorable report thereupon at the next session of Congress; to prepare for publication a full statement of the wrongs and claims of the Cherokees west, and when printed, put it into the hands of the members of the next Congress, and such other persons as they the said A. and J. E. Kendall may think proper; to prepare any memorial or memorials to Congress setting forth said claims; to digest and draw up any statement or statements of facts or argument necessary for the information of that body, or either House, or any committee or committees thereof, or any commission to which the same may be referred; and in all respects to use due diligence and all proper means to obtain the favorable action of said committees and of Congress itself, and of any commission not leaving Washington, and the same to renew and pursue until said claims shall be adjusted, or so long as there shall be any reasonable ground to hope for such adjustment. In consideration whereof, the undersigned, John Rogers, John L. McCoy, and Ellis F. Phillips, delegates duly authorized as aforesaid, do hereby, on behalf of said Cherokees west, covenant and agree to pay, or cause to be paid, the full commission of five per cent. to the said A. and J. E. Kendall, upon any sum or sums of money, or whatever else of value may be allowed and appropriated, in full or in part satisfaction of said claims, to be paid from time to time, as appropriated or allowed; and the said delegates do hereby authorize and empower the said A. and J. E. Kendall, as agents and attorneys in fact for the said Cherokees west, to demand and receive from the treasury of the United States, or from the proper office or officer thereof, one-twentieth part of all sums of money which may be allowed and appropriated, or one-twentieth part of any stock, scrip, or any other species of funds, securities, or annuities which may be allowed, to be made out and issued in their own names; and if lands or other property, or any interest therein, shall be granted in discharge of said claims or any part thereof, to demand and receive from the proper office or officer a full title to one-twentieth part thereof—it being the true intent and meaning of said delegates that the said A. and J. E. Kendall shall receive five per cent., or one-twentieth part, of any and every thing of value which may be granted or appropriated on account of said claims, to be received directly from the United States, without any further act or authority by or from the said Cherokees west.

And the said delegates do further authorize and empower the said A. and J. E. Kendall, as agents and attorneys in fact of the said Cherokees west, to sign the names of the said delegates to any letters and memorials to the President, Secretary of War, Senate, House of Representatives, or other officer or individual, necessary to the prosecution and allowance of said claims; and to execute any receipt, receipts, acquittances, or other instruments of writing, which may be necessary to procure the payment or delivery to them, according to the true intent and meaning of this instrument, of one-twentieth part of the money, property, or evidence of right, title, or claim to money or property which may be appropriated or allowed in satisfaction of said claims, in full or in part; and it is further covenanted and agreed by said delegates, on behalf of the said Cherokees west, that they, the said Cherokees, shall execute any additional power or authority, if any be deemed necessary by the government of the United States, to enable the said A. and J. E. Kendall to receive and enjoy the commission aforesaid, according to the true intent and meaning of this instrument.

Witness our hands and seals, at Washington, D. C., the day and date above written.

JOHN ROGERS.
E. F. PHILLIPS.
JOHN LOWRY McCOY.

AMOS KENDALL.
JOHN E. KENDALL.

Signed, sealed, and delivered, in the presence of
J. E. DOW, *J.P.*

DISTRICT OF COLUMBIA, *county of Washington, ss:*

On this twentieth day of July, A. D. 1843, before the subscriber, a justice of the peace in and for the said county, personally appeared John Rogers, E. F. Phillips, John L. McCoy, Amos Kendall, and John E. Kendall, subscribers and parties to the above instrument of writing, and declared the same to be their free acts and deeds, the interlineations on the third page having been made before signing.

J. E. DOW, [SEAL.]
Justice of the Peace.

AUGUST 14, 1846.

The undersigned, delegates of the western Cherokees or Old Settlers, being a party to the treaty recently concluded to put an end to Cherokee difficulties, do hereby authorize and request the Secretary of War to pay the commissions stipulated for in the within contract, out of any moneys which may be appropriated to pay the debts of the Old Settlers, or out of any moneys which may be found due to them under the said treaty, it being our intention that this contract shall be executed in good faith.

JOHN BROWN.
E. F. PHILLIPS.
his
WM. + DUTCH.
mark.
his
RICHARD + DREW.
mark.
JOHN L. McCOY.

Witness:
NELSON ROGERS.

C.

Proceedings of a convention of Old Settlers or western Cherokees, adopted April 16, 1842.

At a convention of chiefs, headmen, and councillors of the western Cherokees, or Old Settlers, under the treaties of 1817 and 1828, convened, agreeably to notice given, at the house of Mrs. Nancy Rogers, in the forks of Verdigris and Grand rivers, on the 9th day of April, 1842, Captain John

Rogers was appointed president, and Thomas Wilson secretary; and, after counselling together from day to day, until Saturday the 16th instant, the following preamble and resolutions were unanimously adopted:

Whereas information has been received that a delegation has proceeded to the city of Washington, headed by John Ross, for the purpose, it is believed, of making some arrangement with the government of the United States, involving the rights and interests of the whole Cherokee nation; and whereas the western Cherokees, who claim to be the rightful owners of the country now occupied by the nation, have no voice in that delegation, and have not been consulted by the United States or the eastern Cherokees; this convention, therefore, have unanimously determined, in behalf of the nation whose rights have been so long encroached upon, to make known their causes of complaint to the President and other constituted authorities of the United States, and appeal for a redress of their grievances. And for the purpose of preventing the consummation of this injustice, they adopt the following resolutions, viz:

Resolved, That John Rogers, the Glass; James Carey, senior, (or Chicken Cock,) John Smith, Captain Dutch, Thomas L. Rogers, be appointed a committee to prepare a memorial to the President of the United States, on the subject for which this convention has been assembled.

Resolved, That the committee thus appointed be instructed to wait upon Governor Butler, Cherokee agent, and submit these proceedings, with the memorial to be drawn up and signed, for his perusal and sanction, and that he be respectfully requested to forward the same to the Secretary of War, to be laid before the President of the United States, with such remarks in favor of the objects contemplated as he believes they deserve.

Resolved, That a delegation be appointed to proceed to the city of Washington, as soon as practicable, to confer with the President of the United States, and petition Congress, if necessary, on the affairs of the western Cherokee nation; and that this delegation be, and they are hereby, vested with full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States Government; that they have, also, full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things these, the delegates representing the western Cherokees, are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present.

Whereupon, the following delegates were unanimously chosen, in pursuance of the above resolution, viz: John Rogers, James Carey, senior, (or Chicken Cock,) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation.

Resolved, That the delegates, hereby appointed, shall have power to fill any vacancy that may occur in their number.

Resolved, That this convention, having full and entire confidence in the integrity and ability of Colonel S. C. Stambaugh, now at Fort Gibson, who has had a long and intimate acquaintance with the concerns of our people, they hereby nominate him as counsel to be selected by the delegates, in pursuance of the foregoing resolution, and that he be requested to accompany the delegation to Washington.

Resolved, That this convention deeply and sincerely regret the protracted indisposition of their chief and friend, *Andrew Vann*, who has long been confined to a sick bed, and the delegates this day are requested to submit all the proceedings for his inspection and approbation, if it can be done before they leave for Washington.

Resolved, That our delegates are requested, immediately upon their arrival in Washington, to call upon the honorable A. H. Sevier, and honorable Mr. Fulton, senators, and honorable Edward Cross, member of the House of Representatives from the State of Arkansas, and furnish them with a copy of our proceedings, and also make known to them, without reserve, all the grievances of the western Cherokees.

The convention then adjourned till afternoon.

At 3 o'clock p. m. convention again met, and after having [under consideration] the subject of procuring funds, to defray the expenses of the delegation during the period of their employment on the duty this day assigned them, the following resolution was offered and unanimously adopted:

Resolved, That John Rogers, James Carey, sr., and Thomas Wilson, delegates appointed, on behalf of the western Cherokees, to represent them at the city of Washington, are instructed to call on Governor Butler, agent for the Cherokees, and request an advance of one thousand dollars, for the purpose of aiding in defraying the expenses of said delegation; which sum we hereby bind our nation to refund to the United States, out of the first funds which may be due on account of our annuities, if provision is not sooner made by other means for defraying the said expenses. And in case the United States agent for our nation does not advance said sum, then the delegates aforesaid, if they find it necessary to obtain funds, are hereby authorized and empowered to borrow that amount, on such terms as they can procure it, and pledge the faith and property of the western Cherokees for its payment. And said delegates are also authorized to make such provision, in the contemplated arrangement with the United States, as they may deem proper, to embrace all expenditures incurred and payments necessary to make, under the powers intrusted to them by this convention.

Resolved, That these proceedings be signed by the president, secretary, and committee, for and in behalf of the western Cherokee nation.

JOHN ROGERS, *President*.

THOS. WILSON, *Secretary*.

The undersigned, representatives of the Old Settlers or western Cherokees, who signed the treaty of the 6th day of August, 1846, hereby certify that the above and foregoing is a correct copy of the proceedings of the convention of the said Old Settlers or western Cherokees, concluded on the 16th day of April, 1842; and they hereby declare, under the authority vested in them, that all contracts or liabilities incurred by them or any of their predecessors, for the benefit of the western Cherokees, in their aggregate capacity, shall be paid out of any moneys which have been or may hereafter be found due to the said western Cherokees or Old Settlers; and the Secretary of War is hereby authorized to cause the same to be paid.

Witness our hands, this 12th day of August, 1846.

JNO. BROWN,
his
WM. + DUTCH,
mark.
RICHD. DREW,
JOHN L. McCOY,
E. F. PHILLIPS,
Delegation of Old Settlers.

Western Cherokee Convention.

At a convention of a number of the Cherokees, headmen and warriors, of the western Cherokees or Old Settlers, convened at the house of Mr. Alexander Foreman, mouth of Illinois river, Illinois district, Cherokee nation, on the 7th day of November, 1842, Loup Watts was appointed president, and John L. McCoy secretary, and, after counselling together, the following resolutions were unanimously adopted:

Resolved, That we agree with and adopt the resolutions and acts entered into by Captain John Rogers, and others, on the 16th day of April, 1842.

Resolved, further, That John L. McCoy and Ellis F. Phillips be, and are, appointed as a delegation to be attached to the number already appointed, to proceed to the city of Washington, to faithfully execute and carry out all claims unadjusted on the part of the western Cherokees with the government of the United States.

Resolved, further, That these proceedings be signed by the president and secretary, for and in behalf of the chiefs, headmen, and councillors of the western Cherokees, comprising the convention.

his
LOUP + WATTS, *President.*
mark.

JOHN L. MCCOY, *Secretary.*

The undersigned certify that the foregoing is a true copy of the original in our possession.

JOHN BROWN,
his
WM. + DUTCH,
mark.
his
RICHARD + DREW,
mark.
JOHN L. McCOY,
E. F. PHILLIPS,
Delegation of Old Settlers.

Extract from proceedings of general council of "western Cherokees," assembled at Tallentusty, Cherokee nation, on the 4th day of December, 1844.

Resolved by the "western Cherokees," in general council assembled at Tallentusty, in the Cherokee nation, on the 4th day of December, 1844, That we approve, ratify and confirm the resolution and acts of the meeting of "western Cherokees," held in the forks of the Verdigris and Grand rivers, on the 16th day of April, 1842, and of the acts and resolutions of the meeting of the "western Cherokees," held at Alexander Foreman's house, at the mouth of the Illinois river, on the 7th day of November, 1842, and annex hereto, as a part of the procedings of this council, said resolutions and acts.

JOHN BROWN, *President Committee.*

P. Harper, *C. C.*

11. *Resolved by the "western Cherokees," in general council assembled at Tallentusty, in the Cherokee nation, on the 4th day of December*, 1844, That a delegation be appointed to proceed to the city of Washington, as soon as practicable, to confer with the President of the United States on the affairs of the western Cherokee nation, and that the delegation be, and they hereby are, vested with full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; and in all things these delegates, representing the "western Cherokees," are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present.

JOHN BROWN, *President Committee.*

P. Harper, *C. C.*

12. *Resolved by the "western Cherokees," in council assembled*, That the following named "western Cherokees" or "Old Settlers" be appointed, and they hereby are appointed, authorized, and empowered to represent the "western Cherokees" in a delegation to the city of Washington, to confer with the President of the United States, &c., &c., &c.: Captain John Rogers, John Brown, Richard Drew, William Dutch, John Smith.

JOHN BROWN, *President Committee.*

P. Harper, *C. C.*

The undersigned, delegation of Old Settlers or western Cherokees, who signed a treaty with the United States, "for the settlement of Cherokee difficulties and claims against the United States," on the sixth instant, do hereby certify that the foregoing are true and correct copies of the proceedings of the convention of Old Settlers or western Cherokees, adopted at the house of Mrs. Nancy Rogers, on the 16th day of April, 1842; also at the mouth of Illinois on the 7th November, 1842, and also the 1st, 10th, and 11th resolutions adopted at Tallentusty, Cherokee nation, on the 4th day of December, 1844, at which convention the last delegation was appointed to represent the western Cherokees at the seat of the United States government; which delegation, as constituted and recognised, is now present.

And the undersigned do further certify, that by virtue of the authority given by the convention held in April, 1842, the proceedings of which were approved at all subsequent meetings of their people, the several delegations appointed entered into contracts and incurred debts to enable them to prosecute their claim as set forth in the proceedings of these several conventions, for the payment of which debts the faith of the "Old Settlers," in their aggregate capacity, or as a nation, was solemnly pledged. Before they signed the treaty aforesaid in their representative capacity, decided that all debts contracted by either of said delegates on behalf of the nation, which are shown to be just and not contracted on private account, shall be paid out of the first moneys ascertained to be due the western Cherokees under any treaty arrangement entered into with the United States.

And the undersigned do further certify and declare, that Colonel S. C. Stambaugh was appointed counsel for the western Cherokees, in pursuance of a resolution entered into on the 16th day of April, 1842; that he had been for some time previously engaged in the service of the western Cherokees, and on that day they entered into a contract to pay him for his services the sum of ten thousand dollars as soon as an arrangement, to be accepted by them, was entered into by the United States; and upon all moneys which might be awarded from time to time, and at the conclusion of such arrangement, for the benefit of said western Cherokees, above two hundred thousand dollars, he, said Stambaugh, was to receive, in addition, at the rate of four per cent. upon said amount, and also to pay his reasonable expenses in going with the first delegation to Washington, and there attending to their business. But if nothing was obtained from the United States for the western Cherokees, then the said Stambaugh was not to receive any thing on account of his services or expenses.

And they do further declare, that the per-centage to be allowed to said Stambaugh was afterwards, in the year 1844, increased from four to *five* per cent., so as to make said per-centage equal to that allowed to Amos Kendall, esq., who was appointed on the 13th day of July, 1843, to act in conjunction with said Stambaugh in the prosecution of the claims of the western Cherokees.

In testimony whereof we have hereunto set our hands and seals this 12th day of August, 1846.

JOHN BROWN.
his
WILLIAM + DUTCH.
mark.
his
RICHARD + DREW.
mark.
JOHN L. McCOY.
E. F. PHILLIPS.

WASHINGTON, *June* 8, 1848.

SIR: The undersigned, agents and attorneys for the Cherokees heretofore known as "Old Settlers," respectfully present the following suggestions for your consideration:

1. On the 6th day of August, 1846, a treaty was concluded between the United States and the Cherokee people, which provides for the settlement of all difficulties "existing between the several parties of the Cherokee nation," as well "as of the claims held by the same parties against the United States." The undersigned were employed by that portion of the nation designated "Old Settlers" or "western Cherokees," to present and prosecute their claims before the government of the United States. Written contracts were entered into by the representatives of the people, with the undersigned, in the years 1842, 1843, and 1846, the last of which recognising and confirming the others, were signed by the delegation whose names are appended to the treaty of August 6th, 1846.

2. This delegation being virtually the same which executed the original contracts, was officially recognised by the government of the United States, and were adjudged competent to cede and relinquish to the United States the country guarantied to the "western Cherokees," by the treaty of February 14, 1833, and dispose of all the interests of their people. *They executed this last contract with the undersigned, and bound their people for its fulfilment as effectually as they are bound by the contract entered into with the United States, relinquishing all right and title to their country.*

3. One of the undersigned has been recognised by the proper authorities of the United States, *at all times* from the commencement of the negotiation with the "western Cherokees," in 1842, and the other from the date of his contract in 1843, until the treaty which resulted from that negotiation was concluded and signed on the 6th day of August, 1846. The public records will attest this fact. The able report of the Commissioner of Indian Affairs, (upon the claim submitted by the western Cherokees,) dated March 31, 1846, approved by the Secretary of War, April 11, 1846, and communicated to Congress by the President of the United States, with his approval, on the 13th of the same month, embodies the communications and arguments of the undersigned, *as attorneys for the western Cherokees,* (See Doc. No. 185, 1st sess. 29th Congress.) This report, thus sanctioned, adopted the views generally entertained and presented by the undersigned on behalf of those they represented; and if that decision had not been set aside by the appointment of commissioners with instructions to settle the Cherokee difficulties upon a *different basis,* the Old Settlers or western Cherokees would now claim from the United States *the full value of seven millions acres of land.*

4. In the beginning of July, 1846 (not three months after the report of the Commissioner of Indian Affairs was sent to Congress,) the commissioners, above referred to, were appointed as a special board to decide the points in issue, and on the 8th day of that month they organized as a board, opened the council with the several delegations of Cherokees, *and officially notified the undersigned that they might appear before them as counsel and attorneys for the "Old Settler" party.* Under this authority they did appear, and during a session of twenty-nine days were assiduously engaged in arguing the cause of their constituents, and attending to all their interests.

5. On the day the above council convened, the delegation of "Old Settlers," who were recognised and received as such by the commissioners, and afterwards signed the treaty, renewed and confirmed the contracts entered into by their predecessors, with one of the undersigned, and declared it to be obligatory upon their people, and continued to recognise the other as their counsel, afterwards confirming his contract also.

6. After a tedious and laborious investigation, the commissioners on behalf of the United States presented a treaty *based upon their decision,* to which the "western Cherokees" objected. The commissioners, however, peremptorily refused to make any alterations, and a dissolution of the council was threatened, which would have rendered the condition of the Cherokees at home more deplorable than ever. They were thus compelled to accept the conditions offered, and on the 6th day of August the treaty was signed. A clause was inserted in article 5, setting apart $50,000 to enable the "Old Settlers" (*who were destitute of other means*) to pay the debts contracted by them in their *national* or *collective* capacity, during the long period occupied in prosecuting their claims before the government of the United States. This amount of $50,000 was fixed by the *commissioners,*

and not by the "Old Settlers" delegation. The latter insisted that such stipulation should be inserted as would enable them to adjust and settle, *under sanction and approval of the Secretary of War, every just claim for which their people were bound in their aggregate capacity,* and that no *private* or *individual* claims should be allowed. They proposed that the Secretary of War or Commissioner of Indian Affairs should be constituted the judge or judges in all cases, and the claims to be paid only upon his or their decisions.

7. The Senate, however, amended the treaty by striking out the $50,000 clause, together with the 12th article of the treaty, which also only affected the interests of the "Old Settlers;" and with these amendments the treaty was ratified by that body, late in the night of the 8th of August, 1846; two days after it was signed by the contracting parties. On the 12th of the same month, the delegation of "Old Settlers" who signed the treaty certified to the validity of the contract made with one of the undersigned, and on behalf of the people authorized and requested a full settlement to be made upon said contract out of any moneys that might be found due to the "Old Settlers" or "western Cherokees." And on the 14th day of the same month the same action was taken by the delegation upon the contract made with the other of the undersigned.

The undersigned beg the special attention of the Secretary of War to the following points in this case, viz:

The delegation of western Cherokees had as much authority to make contracts with the undersigned as with the United States.

The United States, having recognised that delegation as competent to dispose of all the rights of their people involved in the controversy, are estopped from saying that *they were not competent to make valid contracts with the undersigned.*

They are further estopped by recognising the undersigned as the agents of the "western Cherokees," with a knowledge that they were not volunteers, but acting *under contracts for a stipulated compensation.*

We then present our contracts with the western Cherokees, resting on the *same authority* as their treaty with the United States.

Let us look for a moment at the position of the United States in this matter, not for the purpose of censuring any one, but to secure justice by an appeal to truth.

By the labors of the undersigned, acting and recognised as agents employed as a stipulated compensation, the government is induced to concede that the western Cherokees are entitled to be paid for their country.

They recognise the delegation of western Cherokees as competent to contract for the liquidation of this claim, and the disposition to be made of the moneys found due to their people.

The delegation tell them, that their first wish is to pay their debts and discharge the obligations they have contracted during the prosecution of their claim.

The United States tell them, "*No, not a dollar shall be paid out of your own money; the friends who have fed you and loaned you money to enable you to prosecute this claim, and the counsel who have faithfully served you through toilsome years, for a compensation altogether contingent, shall not have a dollar of your money!*"

In spite of their own requests and remonstrances, the western Cherokees are not permitted to *pay their own debts with their own money,* and the

United States present the extraordinary spectacle of interposing, not to compel a half-civilized dependant people to do justice, *but to prevent it!*

The history of the world presents many cases in which governments have interposed to compel foreign nations or tribes to pay debts due their subjects or citizens; but probably this is the first instance in which a government has forced a nation or people, foreign or *quasi* foreign, into a treaty, repudiating their just debts *to its own citizens!*

The western Cherokee delegation of 1846 refused to concur in the treaty, as amended, because it left them without means to pay their board bills or their travelling expenses back to their country. To induce them to acquiesce in the amendment, it was arranged, under the sanction of the government, that the Ross and treaty party should loan them $20,000 out of the funds provided for those parties in the treaty, which sum was immediately put at their disposition.

Thus was the delegation induced to sanction the amended treaty, when that very act deprived them of the power to refund the money which was loaned them as the consideration for its performance! Not one dollar of this loan can the Old Settlers refund to the Ross party or the treaty party, out of the funds accruing to them from this treaty; and they have no other.

If, under such circumstances, the United States will not permit the western Cherokees to refund the money, are they not bound by every principle of honor and honesty to refund it themselves?

And if the United States will not permit this people, willing and anxious as they are, to discharge all their just debts and obligations out of their own money, are they not equally bound to discharge them out of their own treasury?

The undersigned feel that, if the United States, having recognised them in every shape as the attorneys of the western Cherokees, and knowing the important services rendered by them, will not suffer that people to comply with their acknowledged contracts and pay their own honest debts out of their own money, they virtually assume the obligation upon themselves, and are bound to pay every just debt due from the western Cherokees in their aggregate capacity. It is a case infinitely stronger than that of the French claims prior to 1800, for the payment of which an act passed both Houses of Congress at the last session.

But how shall the object be accomplished?

The objects of the treaty of 1846 are not yet consummated. The second article provides that "all party distinctions shall cease, *except so far as they may be necessary to carry out this convention or treaty.*" The western Cherokees or Old Settlers are thus recognised as a distinct and separate party, until the objects of the treaty shall be consummated. As such, they have sent a delegation here with full power to do any act necessary to carry out that treaty. We go further, and affirm that the western Cherokees remain, *in all respects,* as much a distinct party as they were before. It was for a *consideration* that they agreed to the treaty, and that consideration has not been paid. Should the United States fail or refuse to pay it, will any one say that the treaty would be binding upon them in any of its provisions? Until the payment, therefore, the whole subject remains open and subject to any modification which may be agreeable to the parties. A modification, affecting only *one* of the Cherokee parties, may be made between the United States and *that* party, without consulting the *other* Cherokee parties. Each of the parties may give such direction to the funds set apart for its own exclusive use as it may think proper, without consulting the other parties. This is a plain principle of law as well as of common sense.

The undersigned, therefore, propose that the United States shall, prior to the consummation of the treaty by payment of the money, enter into such further arrangements with the western Cherokee delegation as will enable them to discharge, out of their own funds, all the just debts due from them in their aggregate capacity, upon the adjudication of the Secretary of War and Commissioner of Indian Affairs, a court of justice, or such other tribunal as may be deemed more prompt or convenient.

The undersigned are willing that their claims shall be adjudicated upon by the strictest rules of law and equity, and ask no more than they could recover in a court of justice, if the Old Settlers could be made parties to a suit.

In conclusion, the undersigned beg leave to state that their contracts have all the validity which the signatures of the western Cherokee delegation could give to the treaty of 1846 with the United States, and *more*. The contracts *preceded* the treaty; they were made virtually by the same delegation acting by the same authority; and that delegation had no moral right or legal power to enter into any subsequent arrangements with the United States *incompatible with the obligations of those contracts*. And the undersigned do not doubt that, if the question could be made a subject of judicial decision, the courts of the United States would either declare inoperative and void so much of the treaty as is inconsistent with the obligations of these prior contracts, or require the United States to discharge the debts themselves.

With high consideration, this paper is respectfully submitted by your obedient servants,

S. C. STAMBAUGH,
AMOS KENDALL,
Attorneys for "Old Settlers" Cherokees.

Hon. WM. L. MARCY,
Secretary of War.

A copy of one of the contracts referred to in the foregoing communication has already been filed; the other is now enclosed.

WASHINGTON CITY, *August* 4, 1848.

HONORED SIR: The undersigned, representatives of that portion of the Cherokee nation known as "western Cherokees" or "Old Settlers," duly appointed by a general meeting of their people, convened in Skin Bayou district, Cherokee nation, on the 24th day of December, 1847, very respectfully ask your excellency to procure a faithful execution of the treaty of August 6, 1846, between the United States and Cherokees, without further delay.

It is known to your excellency, that in the year 1817 a treaty was concluded between the United States and the Cherokee nation of Indians, by which it was stipulated that the tribe should be divided, and become separate and distinct nations—the one portion to exchange their lands east of the Mississippi for an *equal* quantity west of that river. The number of the emigrating party was to be ascertained during the month of June, 1818, as also the number of that portion who determined to remain on the lands they then occupied, for the purpose of thus enabling them to make a fair division of the property they *held in common.* In the year 1819 (the census to be taken for the above purpose being dispensed with) a treaty was entered into between the United States and the Cherokees, for the purpose of carrying into effect the objects contemplated by the treaty of 1817. In this last treaty (that of 1819) it was decided that the Cherokees "who had already emigrated to Arkansas, and those who had enrolled for emigration, constituted ONE-THIRD *of the whole nation:* and it was agreed that the lands owned by them, with the annuities due under former treaties, should be divided in this proportion, which gave *two-thirds* to the *eastern* and ONE-THIRD to the *western* nation." The whole country east was then estimated to contain *twelve millions*, or more, *acres*—ONE-THIRD of which was ceded to the United States as the alloted share of the "western Cherokees," for which they received, in payment, *four million two hundred thousand acres in Arkansas.* The annuities due the whole nation in 1819, amounting to $10,000, were also divided, and the *one-third* thereof was thereafter paid to the Cherokee nation west of the Mississippi.

The *Cherokee nation west*, thus organized, at the instance of the United States, entered into a treaty with the Secretary of War in the year 1828, by which they exchanged their country in Arkansas, procured and paid for as above stated, for a country still further west, to which (in consequence of its *inferior* value) was added *three millions* of acres to the quantity procured by the exchange under the treaties of 1817 and 1819, besides fifty-six thousand dollars as *boot money*, with $8,760 for spoliations committed on them by the Osages and citizens of the United States.* In the ensuing year the western Cherokees were all settled upon the lands conveyed to them by the above mentioned treaty; and, by the treaty of February 14, 1833, concluded between commissioners on behalf of the United States and the chiefs and councils of the "*Cherokee nation of Indians west of Mississippi,*" these lands, (with their boundaries defined,) containing *seven millions of acres*, with the use and occupation of all the lands belonging to the United States, lying west of the same, were confirmed to this nation, with a *fee-simple* title.

The western Cherokees, having a *national existence*, remained in the unmolested ownership and occupancy of the country thus conveyed and confirmed to them, until they were dispossessed by the operation of the treaty concluded between the United States and the *eastern* Cherokees of December, 1835.

Now we beseech your excellency to look at the position occupied by the two nations at the ratification of this treaty. The "western Cherokees," by the treaties of 1817 and 1819, had exchanged their portion of the eastern country, being *four millions of acres*, for the country secured to them in the west. The "eastern Cherokees" sold their portion of that country, being the *two-thirds*, or eight millions of acres, for *money*. They were to receive five millions of dollars, *besides a country in the west*, with $600,000 to defray the expenses of their removal, and pay the claims of their citizens against the United States. This sum for *removal* and *claims* was increased by an appropriation made by the act of June 12, 1838, *one million forty-seven thousand and sixty-seven dollars*, making in the aggregate $6,647,067. One million of dollars of this sum was applied, by the treaty, for national objects, and the balance (with the exception of $38,948 50, remaining in the treasury) has been paid out for the benefit of the eastern Cherokees exclusively. And what country did the eastern Cherokees obtain in the west, besides this amount of *boot money*, in exchange for their eight millions in the east, ceded to the United States by the treaty of 1835? Why, the country which had been conveyed to the western Cherokees, first in exchange for their four millions of acres by the treaties of 1817 and 1819, and afterwards in exchange for their lands in Arkansas by the treaty of 1828. This country, thus secured to the western Cherokees by the operation of the treaty of 1835, was made the *common property* of the Cherokees east as well as the Cherokees west; thus bringing across the Mississippi river the *two-thirds* of the nation (as it existed *anterior* to the treaty of 1817) who had just *sold their lands for money*, to take possession, in proportion to their numerical strength, of the lands of the western Cherokees, which they obtained in payment for lands in the east, which they owned as *one-third* of the old nation, and ceded to the United States by the treaties of 1817 and 1819. Is it not manifest, therefore, that to place the old "western Cherokees" upon an equality with the "eastern Cherokees," (without taking into consideration the privations and dangers, the loss of life and property, they endured and sustained as the early pioneers of that then savage frontier,) they must receive in money for their 4,000,000 acres ceded to the United States by the above-mentioned treaties, just *one-half* of the price stipulated to be paid the eastern Cherokees for their 8,000,000 of acres ceded by the treaty of 1835! By which settlement they (the western Cherokees) would receive $2,500,000! Or, should not this mode of settlement, as a matter of *principle*, be adopted, then the western Cherokees were entitled to payment for TWO-THIRDS of their country west of the Mississippi, which they had purchased as before stated, the moment it was taken possession of by the eastern Cherokees! The value of the land for which they were thus entitled to payment was fixed by the United States in the treaty of 1835, by charging the Cherokees for lands of an inferior quality *sixty-two and a half cents per acre!!*

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* See 5th article treaty of 1828.

The undersigned have thus briefly traced the history of the rise and fall of the "western Cherokee nation," to bring the peculiar hardship of their present case and condition to the earnest attention of your excellency, and not with the vain view of changing the provisions of former treaties, under which they have suffered so much injustice. They are aware that their destinies are now linked to the treaty of August, 1846, and it is to procure a prompt and faithful execution of that treaty, under a construction which *common sense* and the evident intent and meaning of the *Indian contracting party* will give it. No *tribunal* is designated by that treaty to settle the claims arising under it; and in the absence of this designation the subject was referred to the department which, under the law, has administrative jurisdiction. The Commissioner of Indian Affairs, to whom it was referred, made a report, which, with the sanction of the Secretary of War, was communicated to Congress by your excellency on the 19th May, 1848. The settlement in this report shows that $6,647,067 have been invested and paid on account of the cession of land made by the eastern Cherokees in the year 1835, deducting a small amount remaining in the treasury. Of this sum, $1,979,198 94 have been paid on account of removal and subsistence. Mr. John Ross, as chief and agent of the nation, received $1,357,745 92 for removing something over thirteen thousand Cherokees, which, at the rate $20 per head, (allowed by the treaty, and for which hundreds moved themselves,) would have only cost a fraction over $260,000! Here, then, was upwards of a million of dollars paid out as *per capita* money to the chief and agent who contracted for his people. Did the "western Cherokees" receive any part of this money? Not one dollar. They were expressly excluded, by the 15th article of the treaty of 1835, from "all participation in the personal benefits" arising under it; and it was not until the year 1846, *ten years after its ratification*, that they were informed, by commissioners appointed by your excellency, that they "had no exclusive title to the country conveyed to them," as already shown, "west of the Mississippi river," but that they were joint owners with the eastern Cherokees in the lands sold by the treaty of 1835, and, consequently, as "one-third" of the old nation, were entitled to an interest in them in that proportion. Hence, in the year 1846, after the western Cherokees had been contending for their rights lost by the treaty of 1835, upwards of ten years, they were informed that they were entitled to the *one-third* value of the land sold by that treaty, and to all the personal benefits arising under it! But, unfortunately, when the discovery of an error was made known, all, or nearly all, of the money appropriated had been expended for the use and benefit of the eastern Cherokees. Out of that vast amount the western Cherokees have not received a farthing, although they are justly entitled to *one-half as much as the eastern Cherokees*, being ONE-THIRD *of the whole nation*, as it existed prior to the treaties of 1817 and '19.

The Commissioner of Indian Affairs has found due (by the principle he has adopted for settlement under the treaty of 1846) $419,763 96. This is estimated as the value of the interest of the "western Cherokees" in the *eastern* and *western counties*, which has been referred to and described in this communication. The undersigned humbly beseech you, on behalf of their people, to intercede in procuring for them this appropriation during the present session. It is required by a solemn treaty stipulation. The "Old Settlers" have not yet received any money under the treaty of 1835. Whatever amount is found to be justly due them now, was due them immediately upon the ratification of that treaty in 1836. Let the sum found due by the Commissioner of Indian Affairs, upon a construction of the treaty most favorable to the United States, be appropriated without further delay, and let the disputed questions only be postponed for further investigation. It was not the "western Cherokees," but the counsel for the "eastern Cherokees," or government party, that refused to receive the sum found due by the department at this time, and petitioned to refer the settlement to the accounting officers. The "western Cherokees" are poor, and, having received no benefits under the treaties of 1835, they humbly pray that payment be made to them of the sum found due by the Indian Department, *and let the contested items in their claim* alone be deferred for future examination.

The second article of the treaty of 1846 gives the "Old Settlers" or "western Cherokees" the right to prosecute their claim *separate* and *distinct* from the government party of the nation. This right they claim, and intend to exercise, with the permission of the United States government, until their brethren, known as the "eastern Cherokees," disclaim the right to act for them, and will join them in using their best endeavors to have full justice done to all the Cherokees. The treaty of 1835, by which the eastern Cherokees were made to relinquish all their country east of the Mississippi, has not yet been executed. The owners of the soil, which was held in common—the property of the poor as well as the rich—have not yet been paid the value of their common property. The large amount of money appropriated to carry the treaty into effect has been expended under extravagant contracts, made by the United States on account of removal and subsistence, and to pay debts or claims presented by *individuals* of the nation against the United States. In this way the appropriation has been exhausted without paying anything *directly* to the mass of the eastern Cherokee people as *per capita* money. The large sum paid (in which they were all interested, for removal,) was paid to their chief and agent.

The undersigned, therefore, in pressing the claim of the western Cherokees upon your excellency's attention, for the reasons set forth in this appeal, do not desire to throw any obstacles in the way of the Cherokees known as the "government party" in obtaining the full amount of money, to be divided *per capita*, which is yet due them as the value of their lands sold by the treaty of 1835. All we ask is, that the sum found due the western Cherokees by the War Department shall now be appropriated as the *first payment to these people* of moneys due them more than twelve years!

In submitting this humble appeal to your excellency, we humbly request that the Secretary of War will make direct application to the appropriate committees of both houses of Congress for an appropriation of this money, due under a treaty stipulation, and, if he deems it expedient and proper, that he will accompany his application with copies of this our appeal.

We are, truly, your excellency's friends, and obedient servants,

JOHN L. McCOY,
Representative of Old Settler Cherokees.

His Excellency
the PRESIDENT OF THE UNITED STATES.

The above memorial was prepared for the signature of Mr. Aaron Hicks, the delegate of the "Old Settlers," associated with the undersigned. But, although he approves of all it contains, yet he refuses to sign any paper, or make any demand on behalf of the "Old Settlers," except for $30,000 to be taken from their money to pay certain claims held by Messrs. Rogers and Duval, of Fort Smith, Arkansas, and others named in a schedule made by a committee of Cherokees last December.

The undersigned has been prepared at all times to appear with the counsel, regularly and openly appointed by the "Old Settlers," to attend to all their business, before the executive and legislative departments of the government, and urge a fair and just settlement under the treaty of August, 1846. He conceived it was wrong to ask for the payment of claims *against* his people, without, at the same time, requiring a just settlement of *their* claims against the United States, and an appropriation of the money due them, out of which they are alone able to pay their just debts.

He was a delegate in the city of Washington from the "Old Settlers" in the years 1843, 1845 and 1846, and is one of the signers of the treaty of August, 1846, under which a settlement is now claimed. He knows that contracts were entered into by the several delegations, and confirmed by the delegation who signed that treaty, which must be paid out of the money that may be found due under such settlement. To protect the interest of the western Cherokees, or "Old Settlers," therefore, he has uniformly recommended that a provision should be made in the appropriation made for the benefit of the "Old Settlers," that all claims held against these people, in their collective capacity, should be submitted to the Secretary of War, or other United States tribunal, for adjudication. In this way, only, can improper claims made for debts due by *individuals*, and not contracted for the benefit of the whole people in their *collective capacity*, be detected. And thus, also, when contracts are produced, it can be ascerteined whether they have been made fairly and openly for the benefit of the whole people—that exorbitant charges have not been made, and the contracts have been faithfully complied with by the other party. All just claims are binding upon the "Old Settlers" as an honest people, and should be provided for out of the *per capita* money, as they have no *national fund* out of which to discharge such claims.

I have the honor to be, very respectfully,
Your excellency's friend and servant,
JOHN L. McCOY,
Delegate.

WASHINGTON, *August* 8, 1848.

The undersigned, citizens of the Cherokee nation and signers of the treaty of August, 1846, as delegates appointed by the nation, have had submitted to them the above and foregoing memorial, signed by John L. McCoy, who is also one of the signers of the treaty of August, 1846—and knowing the wants and wishes of that portion of the Cherokees represented by Mr. McCoy, and that the facts and circumstances he has presented have existence, they cheerfully and cordially concur in the propriety and necessity of the application he has made for the benefit and relief of the "Old Settlers." If the appropriation of the money which has been found due by the United States government is not made at the present session, great distress and discontent will be produced among these people. The undersigned also concur in and approve of the suggestions made to your excellency, with regard to the payment of the just claims against the "Old Settlers," based upon contracts fairly made, and which have been faithfully complied with by those who were thus bound to render them service in their *collective* capacity.

Very respectfully,
W. S. COODEY,
RICHARD FIELDS.

To his Excellency the PRESIDENT.

D.

CHEROKEE NATION,
Near Fort Gibson, April 16, 1842.

To his Excellency the President of the United States:

HONORED SIR: The undersigned, on behalf of that portion of the Indian family long known as the "western Cherokees," beg leave to address you on a subject vitally important both to their nation and to the government of the United States. A crisis in their affairs has arrived which requires prompt and energetic action; and they enter upon the task assigned to them, by a solemn sense of duty, with sentiments of respect and veneration for the constituted authorities of the United States, which have heretofore governed all their actions. They have complaints to make which can no longer be with safety deferred; and they will endeavor, in doing so, to divest themselves of all unkind feeling against those from whom they have suffered wrong, and base their appeal upon provisions made by law and treaty stipulations.

At the close of President Jefferson's administration a council was held with the Cherokee people, upon a proposition to effect a *separation*, upon which occasion that venerated patriot speaks to them as follows: "The United States, my children, are the friends of both parties, and as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who wish to remove are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, and the higher up the better, as they will be the longer unapproached by our settlements, which will begin at the mouth of those rivers. When this party shall have found a country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the *exchange* of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right."

This was the assurance given by the President of the United States, on the 9th day of January, 1809, in reply to a petition from a deputation of the then existing two parties of the Cherokee nation, designated as the *upper* and *lower* towns. The whole communication breathes kindness and encouragement, and lays the groundwork of all subsequent action upon the plan of organizing an Indian government west of the Mississippi river. It recognises the division of the Cherokee tribe, and from that period they have been know as the *eastern* and *western*, or *emigrant* and *anti-emigrant* parties. In 1817 the first treaty arrangement was entered into between the United States and the Cherokees, predicated upon, and in pursuance of, the promises made by the President in 1809, although many of the emigrating party had already located upon the lands referred to, on Arkansas and White rivers. The commissioners who negotiated this treaty had the whole previous correspondence between the government and Cherokees before them, and understood the intentions, wishes, and true interests of both parties. Its third and fourth articles make provision for a final separation of the *western* from the *eastern* Cherokees, and expressly stipulate that their property shall thereafter be held separately, and that the annuities arising from the sale of their lands shall be divided between them in proportion to their numbers. The fifth article provides for the exchange of lands, and the interest conveyed by the United States is clearly vested in the western party.

In 1819, a convention was held by the honorable John C. Calhoun, Secretary of War, with a delegation of eastern Cherokees, who "expressed their earnest desire to remain east of the Mississippi river;" at which convention they stipulated for their future residence in the east, confirmed the separation from their western brethren, and agreed that their annuity should be paid, thereafter, *two-thirds* to the eastern and *one-third* to the western Cherokees.

But a few years had elapsed, after the consummation of this arrangement, when the western Cherokees again found themselves surrounded by white people, and the government manifested a desire to obtain the lands they occupied for its own citizens; accordingly, a new treaty was negotiated in 1828, between the honorable James Barbour, Secretary of War, and a delegation of *western* Cherokees, by which the latter *exchanged their lands in Arkansas* for the country they at present occupy. The preamble to this treaty explains the causes which led to its negotiation; and the 1st and 2d articles define the limits of the new country, with the solemnly pledged guarantee that *seven millions of acres, with a perpetual outlet west*, shall be and remain theirs forever. It was made exclusively with the *western Cherokees.* They were alone responsible for its conditions; and if the bargain had been a bad one—if the lands received in exchange had been found less valuable than those relinquished in Arkansas, they alone could suffer. No interest of their eastern brethren was sacrificed, or even involved in the bargain and sale, or exchange of these lands. The 7th article clearly establishes this position by the stipulation that the "western Cherokees will leave all the lands to which they are entitled in Arkansas, and which was secured to them by the treaty of 8th of July, 1817, and the convention of 27th February, 1819," when not one acre of land was relinquished on the east of the Mississippi river, although an invitation is extended to the eastern Cherokees to join their western brethren, and the most liberal provision is made for emigrants, especially from the "chartered limits of the State of Georgia."

The undersigned can refer with pride to the progress of emigration under the treaty of 1828. The United States encountered no difficulty or delay in procuring the removal of the *western Cherokees* to the country assigned them. They came promptly and cheerfully into the wilderness; and, overcoming every obstacle incident to a first settlement, they in a short time dotted it with their habitations, and rich cultivated fields. When the commissioners came to treat with them in 1833, they were rapidly advancing in improvement and civilization. This treaty was concluded at Fort Gibson, on the 14th of February, 1833, and to its provisions the attention of the Chief Magistrate is now earnestly solicited. It is the last to which the United States and the *western* Cherokees are parties; and upon its provisions we base our hopes of obtaining redress for the series of wrongs we have sustained, since the usurpation upon our rights under the treaty of 1835. Its caption distinguishes the parties to it, as "commissioners on the part of the United States, and the chiefs and headmen of the *Cherokee nation of Indians west of the Mississippi*, they being duly authorized and empowered by their nation." The preamble again designates the Indian party as the "chiefs and headmen of the Cherokee nation west of the Mississippi," and fully and conclusively proves that the United States and the *western Cherokees* were the sole parties to the treaty of 1833. The *eastern Cherokees* were consulted by neither party on the subject of this treaty; they had no delegation attending the council—offered no opinion or advice concerning the arrangement to be made, and manifested no anxiety about the settlement of boundaries which were intended to limit the Cherokee country forever. They were, at that time, entirely indifferent about the affairs of their western brethren, and remained quietly at home attending to their own interests.

Having now shown the existence of two distinct and separate bands of the old Cherokee nation ever since the year 1809; that they divided their property by the treaty of 1817 and convention of 1819; that in 1828 the *western Cherokees* treated with the United States for an *exchange of lands*, as a separate and independent nation; and that this nation, thus constituted, is *the sole party in interest* with the United States to the treaty of 14th of February, 1833; the undersigned now submit its provisions for your serious consideration.

The object of the government in making this treaty, as avowed at the time, was to adjust and settle the boundary lines between the Cherokees and Creeks and other neighboring tribes, about which there was some dispute, and also to fix, definitely and permanently, the boundaries of the Cherokee country, in accordance with the provisions of the treaty of 1828. These boundaries are established by the first article, and a title to the lands, in *fee simple*, confirmed to the Cherokees, with the solemn promise, on behalf of the United States, "that *letters patent* shall be issued *as soon as practicable* for the land hereby guarantied." This treaty contains no proviso for the admission of the eastern Cherokees, similar to that contained in the fourth article of the Creek treaty, concluded at the same time, which expressly provides "that the lands assigned to the Muscogee Indians shall be taken and considered as the property of *the whole Muscogee or Creek nation*, as well of those now residing upon the land, as the great body of said nation who still remain on the *east side of the Mississippi*." No condition of this kind can be found in the Cherokee treaty. It contains a complete and absolute surrender by the United States to the western Cherokees, of all title and jurisdiction to or over the ceded lands. It makes no reference to, or reservation under, any existing law of the United States; but, on the contrary, it repeals by its 3d article that clause in the treaty of 1828 wherein the United States "agree to give the Cherokees a plain set of laws and survey their lands at the cost of the government, whenever they desired to own them individually."

The act of Congress of May, 1830, cannot affect the tenure to these lands, as no reference is made to it by the treaty under which the Cherokees derive their title; and that law is intended exclusively to enable the President to effect *an exchange of lands* with Indians residing east of the Mississippi for an equal number of acres west of said river, in pursuance of the long settled policy of the government. There was no *exchange of lands* made by the treaty of 1833. It only confirmed the title vested in the Cherokees by the treaty of 1828, which was concluded two years anterior to the passage of the law referred to. Hence, the undersigned declare the opinion always entertained by their people, that a full and absolute title, in *fee simple*, to the *seven millions of acres, with the outlet*, passed from the United States to the Cherokees by the treaty of 1833, as fully and effectually as any cession of land could be made by treaty concluded between the United States and Spain or France, or any other government or people. This title was confirmed by the ratification of the treaty on the 12th of April, 1834, and no *subsequent* law or treaty stipulation can change it, or impair the rights conveyed and guarantied, without the consent of the western Cherokees as a party to such law or treaty.

Having thus, we humbly believe, clearly shown by existing treaty stipulations that the *western Cherokee nation*, as organized under the treaty of 1817, are the rightful owners of the soil now contended for by the *eastern Cherokees*, the undersigned present this humble memorial to you as the Chief Magistrate of the United States, and implore your aid and protection in this effort on behalf of their people to obtain their just rights. The western Cherokees, by their energy and perseverance, obtained this last resting place for their nation; they secured to themselves and their posterity a territory embracing altogether at least fourteen million acres of land, and made other provision for the benefit of their people. They were the pioneers who first tilled the ground on the extreme western border of your extended territory. Placed in the vicinity of the then wild and savage tribes of this frontier, and subjected to their long continued depredations, the first years of their emigration were exhausted in protecting their property and themselves against incursions from their lawless neighbors. Thus did the western Cherokees, the Old Settlers, the pilgrims under the treaty of 1817, toil and struggle to obtain the settled home in the far west, promised them by the President of the United States as early as 1809. Where are these people now, and where are the rights and immunities so often promised and at last solemnly pledged to them? Why, they are aliens in their own country, with another people and other laws ruling over them. And this usurpation has been perpetrated under the apparent sanction and authority of the New Echota treaty of 1835; not by those who negotiated that treaty with the United States, but by the very men who opposed the arrangement from its inception to its confirmation, and who do not now acknowledge its validity.

The undersigned do not complain against their eastern brethren for making that treaty, but they do complain and protest against some of its conditions. It was a transaction between the United States and the *eastern Cherokees,* bargaining for a cession of the lands held by the latter *east of the Mississippi,* in which the western Cherokees had no concern; it could not legally affect any rights secured to them by former treaties, without their full and voluntary consent and approbation. But what are its stipulations? The United States contracts to pay the Cherokees five millions of dollars for a relinquishment of all their lands and possessions east of the Mississippi river; and then agrees to give them a country in the west, in accordance with the provisions of the act of May 28, 1830. And the country thus provided and given in exchange for that obtained from the Cherokees east, embraces the very tract of land solemnly guarantied to the western Cherokees by the treaty of 1833; and for which, by the conditions of that treaty, they ought then to have been in possession of a patent from the United States.

The undersigned earnestly solicit the President's attention to this portion of their complaint. They ask him to examine the provisions of the treaty of 1833, which has never been repealed or annulled by any act to which the western Cherokees have been a party, and then read the conditions of the New Echota treaty for a plain and palpable violation of those provisions. The United States assumes, by the treaty of 1835, to be the owner of the country transferred to the *western Cherokees* by the treaty of 1828, in exchange for their lands in Arkansas, and confirmed with a *fee simple* title by the treaty of 1833, and cedes this country, whole and entire, to the eastern Cherokees, either as a *gratuity* or *in exchange* for their lands east of the Mississippi. In order to obtain a clear understanding of the terms of the New Echota treaty, we will quote such portions of it as have a bearing upon the present question. The preamble gives a resolution of the Senate, which says, "that a sum, not exceeding five millions of dollars, be paid to the Cherokee Indians, for all their lands and possessions east of the Mississippi river." This would be, to all intents and purposes, a sale and purchase, with a full consideration paid. The first article, however, varies the terms expressed in the above resolution, and reads thus: "The Cherokee nation hereby cede, relinquish and convey to the United States, all the lands owned, claimed and possessed by them east of the Mississippi river, and *hereby release all their claims upon the United States for spoliations of every kind,* for and in consideration of the sum of five millions of dollars," &c. But the same article contains an agreement to submit this question again for the consideration of the Senate.

The second article then describes the boundaries of the country secured to the western Cherokees by the treaty of 1833, quoting the very words of that treaty; and then, preparatory to its cession to the eastern Cherokees, this article provides that, "whereas it is apprehended by the Cherokees that, in the above cession, there is not contained a sufficient quantity of land for the accommodation of the whole nation, on their removal west of the Mississippi, the United States, in consideration of the sum of *five hundred thousand dollars,* therefore hereby covenant and agree to convey to said Indians and their descendants, by patent in *fee simple,* an additional tract of land," which is described and "estimated to contain eight hundred thousand acres." By the third article, the whole country is then conveyed as follows: "The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet, and those ceded by this treaty, shall be included in one patent, executed to the Cherokee nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830." The undersigned now submit the question—"Would not the annexation of the additional tract of eight hundred thousand acres, for a consideration paid therefor, clearly prove that the five millions of dollars was to be received as payment in full for the lands ceded in the east, and that the party who sold it must provide a country for themselves, if the United States had not, at the same time and by the same act, ceded to them the lands of the western Cherokees?" The inference to be drawn from these acts is plain and manifest. The United States are either bound to pay for all the lands conveyed to the eastern Cherokees, out of its own funds, or else the balance of the five millions of dollars, after deducting the five hundred thousand dollars paid for the additional tract, should be applied for that purpose. The government, it is presumed, did not intend to pay, both in *money* and *lands,* for the possessions relinquished by the eastern Cherokees, otherwise it would not have demanded payment for *its own lands* given in exchange.

By the convention of 1819, it was estimated that the western Cherokees comprised one-third of the old nation, and the annuities have since been divided and paid in that proportion. If, then, they were possessed of seven millions of acres, with an outlet of the same extent, estimated together as containing *fourteen millions of acres of land,* and it was proposed to purchase of them a part of it for the accommodation of their eastern brethren, in proportion to their numbers, the western Cherokees would be entitled to payment for upwards of *nine millions of acres;* and the value placed upon it should be made to correspond with the price paid for the "additional tract" sold by the United States to the eastern Cherokees, by the same act under which it was conveyed. Is not this a fair and plain presentment of the facts of the case? The United States sold to the eastern Cherokees *eight hundred thousand acres of land,* and conveyed to them, at the same time, about nine millions of acres more, belonging to another party, without the consent of that party, or paying any value therefor to the rightful owners. Thus have the western Cherokees been dispossessed of two-thirds of their landed possessions; and the act has been committed by the government of the United States, who claimed the ownership after the Indians had obtained lawful possession, and disposed of them, by the treaty of 1835, as it would dispose of any of the public lands. Would any people or nation upon the face of the earth, provided for as the western Cherokees, voluntarily and tamely surrender possession of their lands without receiving an equivalent? or would any nation of people, governed by rules of law and equity, forcibly take such possession of the property of another, or obtain it without hinderance, because there existed no power of resistance? Not one single benefit has been conferred upon the western Cherokees by the New Echota treaty, except the addition to the general school fund, provided for by the tenth article. The various shops and mechanics, now so beneficially employed for the nation, were provided for by the treaty of 1833; and no addition is made to these provisions by the treaty of 1835. The only party intended to be benefited by that treaty, according to the stipulations of the fifteenth article, was the Cherokees then residing east, and those who had enrolled for emigration since June, 1833. On the other hand, not only the title to the land has been taken away or changed, but other rights and privileges of the western Cherokees are curtailed, and all their interests injuriously affected by its provisions.

Now, we seriously ask, "How did the United States *regain* possession of the lands conveyed to the western Cherokees by the treaty of 1828, or where did the government obtain the power to exercise possessory control over it, after the treaty of 1833?" That treaty had been approved by the President and ratified by the Senate of the United States, and was, in December, 1835, binding and obligatory upon both contracting parties. It had never been annulled or repealed by any act to which the western Cherokees were a party; and they never granted, or acquiesced in, the control assumed by the United States in 1835; but always have, and do now, deny the existence of the power then exercised. Let us examine further the treaty of 1835. By the first article, as has already been shown, the eastern Cherokees cede to the United States all their lands and possessions east of the Mississippi, for and in consideration of the sum of five millions of dollars, which is to include all their claims for spoliations of every kind; but, as doubts had arisen about the intention of the government in making this stipulation, the question was again "submitted to the Senate for their consideration and decision." Now, let us turn to the supplementary articles of this treaty, agreed upon on the first day of March, 1836, and we find that the *five millions of dollars* was *fixed as the value of the Cherokee lands east of the Mississippi!* and that the sum of six hundred thousand dollars *was provided to pay the expenses of their removal west, and to liquidate all their claims of every description* against the United States not otherwise expressly provided for. This sum of five millions of dollars, therefore, cannot be touched for any expenditure under the treaty, except four hundred and fifty thousand dollars required by the tenth article, and five hundred thousand dollars stipulated for in the second article as the consideration to be paid to the United States for the cession of the additional tract of land. Every other claim is embraced within the provisions of the third supplementary article, and cannot be taken from the *five mil-*

lions to be paid as the value of the lands relinquished by the Cherokees. The balance of this money, therefore, amounting to four million and fifty thousand dollars, was due to the Cherokees, upon the ratification of the treaty, and should have been equally divided among them, as provided for in the fifteenth article, which denominates the recipients as "the people belonging to the Cherokee nation *east,* and such Cherokees as have removed west since June, 1833." This money, which is called the *per capita* or *head-right* money, has been long and anxiously looked for by the Cherokee people; and although the western Cherokees are debarred from all benefit by the terms of the treaty, yet they sympathize with their eastern brethren, and ask the question, what has become of this money? The balance, of upwards of four millions, as we have shown, has not been expended for any legitimate purpose; and it is doubtless in some safe depository, intended to be applied in effecting some great national measure. The first foot-hold was obtained in this country by the eastern Cherokees, under the promise that their western brethren should receive a proportionate share of this fund, and participate in all the benefits of the treaty of 1835; and the same deception, practised upon the credulous of our people, procured the execution of an instrument in writing, styled "*an act of union between the eastern and western Cherokees,*" dated July 12, 1839.

The undersigned, a remnant of the old Cherokee settlers, who left the home of their fathers, east of the Mississippi, a quarter of a century ago, do now, for themselves and on behalf of the western Cherokees, most solemnly protest against that act of union being taken as their *act and deed*, or that, under its provisions, they can be divested of any rights guarantied by the former treaties. They do, likewise, most solemnly protest against the occupancy of their lands under the treaty of 1835; and recognise no treaty of stipulation conveying title to the lands they now occupy, and claim as their country, except those concluded in 1828 and 1833. And, lastly, they do solemnly protest against the exercise of any right or jurisdiction over their country by a delegation of Cherokees who have recently gone to the city of Washington, purporting to be a delegation representing the Cherokee nation.

The undersigned, who have been appointed a committee, at a convention of the *western Cherokees* now in session, present this humble memorial to you, as the Chief Magistrate of the United States, with the fervent prayer that you will maturely consider their case and procure justice to be done to the Cherokee nation. A delegation of the old men of the nation, formerly chiefs and principal councillors, who signed the treaties of 1817, 1828, and 1833, have been this day appointed to visit the seat of government, clothed with full powers to settle and adjust all the affairs of their nation. When they meet you, they will submit distinct and plain propositions for your consideration; and as they believe their claim is founded upon sound principles of law, justice, and humanity, they hope, under the protection of a kind Providence, for the happiest results.

With sentiments of respect and esteem, we are your friends,

THOS. WILSON,
[*S. C., and signer of the treaty of* 1817,]
JOHN ROGERS,
Who signed the treaty of 1828, *and of* 1833,
as president of national committee,

his
GLASS, ×
mark.
Who signed treaty of 1833, as president of council,
his
JAMES + CAREY, or CHICKEN COCK,
mark.
his
JOHN + SMITH,
mark.
Signer of treaty of 1817,
his
CAPTAIN + DUTCH,
mark.
THOS. L. ROGERS,
Committee on behalf of the Western Cherokees.

Witnesses present at signing:
WM. D. SHAW.
THOS. L. ROGERS,
District Judge, Cherokee nation.
PETER HARPER.

[B—referred to in No. 5.]

Cherokee Claims.—Exposition of the Claims of the Western Cherokees and their Creditors.

For many years the western Cherokees sought in vain for reparation of the many wrongs done them by the United States. In August, 1846, a treaty was made in which they were promised a partial indemnity in money. The amount to be allowed depended on an adjustment of accounts which it was expected would be made before the next session of Congress. The session of 1846–7 passed away without any report of the amount due. At the session of 1847–8, the Commissioner of Indian Affairs reported as due to them $419,000; but instead of making an appropriation, Congress referred the matter to the Second Comptroller and Auditor for a further examination of the accounts. Those officers have found a larger sum due to the western Cherokees; and the Senate have made an amendment to the Indian appropriation bill, providing for its payment as well as the payment of moneys due other portions of the Cheerokees under the same treaty.

It is now almost three years since that treaty was made, pledging the faith of the United States, with all reasonable despatch, to pay this acknowledged debt. To each successive session of Congress have these people looked, but looked in vain, for compliance with the promises made them. Surely, Congress will not adjourn again without making this appropriation; they will not aggravate the discontent now pervading that people—will no longer suffer them to doubt the honor and good faith of a government to which they look for justice and protection. The western Cherokees have creditors who have as much right to complain as the Indians themselves. Not on account of superior merit in their claims, but because they better understand them, the undersigned will give a brief history of their connexion with these unfortunate people.

In 1843, one of the undersigned was confined to the prison limits in this district for acts done in the faithful discharge of his public duties as Postmaster General, and was obliged to resort to some local profession or calling, as means of procuring subsistence for himself and family. In connexion with his undersigned nephew, he established a general agency for the prosecution of claims against the government.

The undersigned were wholly unacquainted with Indians or Indian business. They did not know that such a people as the western Cherokees existed, until Captain John Rogers, their principal chief, came to them and solicited their aid in prosecuting a claim.

There was no law forbidding white men becoming agents of claims for Indians. There was no custom to prevent it. On the contrary, it was then the practice of the government to protect such agents—to pay them their commissions, (generally ten per cent., but sometimes twenty,) directly from the treasury.

Nor was there any law or custom to forbid contracts in such cases altogether contingent. Indeed, most contracts for Indian business were of that sort. The chiefs of the western Cherokees *could make no other*. Their corporate existence had been destroyed, their national funds merged with those of the eastern Cherokees, and their principal chief was an exile from his country.

Under these circumstances, the undersigned entered into the annexed contract, not having a doubt as to its legality or as to the disposition of the government to protect any rights which might accrue to them under it.

With what fidelity and perseverance the service was performed, the records and files of the War Department, of Congress, and of the commission which negotiated the treaty of 1846, bear ample testimony. The labor bestowed on the case was more than that of one man for a whole year. Volumes of documents without indexes had to be examined, long arguments drawn up, the erroneous decisions and action of the government exposed, and the public authorities made sensible of the wrong and injustice which had been done to these helpless people.

The undersigned were recognised and treated as agents for the western Cherokees by three successive administrations of the War Department; were officially informed of the appointment of the commission to treat in 1846, made written and oral propositions and arguments before that commission, and to this day have not ceased occasionally to communicate with the government in carrying out the objects of their written contract.

The treaty of 1846, as originally framed, set apart $50,000 to pay the debts of the western Cherokees, and provided that the balance of the money found due to them should be divided *per capita* among the Indians of that party. The western Cherokees maintained that *all* their just debts should be provided for, and objected to the $50,000 restriction; but the commissioners were inflexible. And the Senate, in ratifying the treaty, struck out the $50,000, leaving no provision for the payment of any debt whatsoever!

The western Cherokees refused to acquiesce in an amendment which they considered, if sanctioned by them, a fraud on their contracts, while it left them no means to pay their board bills in Washington or carry them back to their own country. Finally, considering their helpless condition, and being furnished with $20,000 as a loan from the other Cherokee parties, they acquiesced in and signed the treaty as amended by the Senate.

At the same time, they declared that the necessities of their condition alone induced them to acquiesce in the treaty as it then stood; that they desired every just debt of their people, in their aggregate capacity, to be paid out of their funds; and as evidence of their sincerity, gave the undersigned upon their contract a written order, signed by every one of the western delegation who signed the treaty, requesting the government to pay the commissions stipulated for out of their funds when appropriated.

Annexed is a copy of the contract, with the order of the delegation. How stands the case?

We did not hunt up the Indians or their claim, nor solicit their business; *they came to us* and asked our assistance in an almost hopeless case.

We made a written contract with them to *give them our services for nothing if they recovered nothing*, or for five per cent. on whatever they might recover. It was the only species of compensation these people had to offer; and so far from such contracts being deemed illegal or improper, it was the practice of the government, as already stated, to recognise and protect them, and *is so to this day*.

The services we contracted to give were faithfully and perseveringly rendered until crowned with success.

We have been recognised by the government as the authorized agents of the western Cherokees, from the date of our contract down to the present day.

Our contract was made by the same *delegation* and sanctioned by the same *men* who made the treaty. *They had as full authority to contract with us as with the United States;* and if the treaty is binding, so is our contract. If they could bind their constituents in a bargain with the government, they could bind them in a contract with us; and as our contract is of date prior to the treaty, it is at least of paramount obligation.

Why cannot this debt be paid? It is not the fault of the Cherokees. From first to last they have been desirous to pay all their honest debts. But *the United States will not let them pay their own debts out of their own money.* The United States imposed upon them the restriction to $50,000, *contrary to their will.* The United States struck out even that limited provision, *contrary to their will.* The United States now hesitate to allow these debts to be paid, *notwithstanding their new and reiterated request.* The United States were guilty of enormous wrong towards these people. We have been instrumental in convincing them of this wrong, and inducing them to make reparation; and now the wrong-doers refuse to let our clients pay us, *as if to punish us for opening their eyes to their own injustice!*

It is said that government ought not to encourage agents for Indian claims by recognising their contracts.

This is as much as to say that those unhappy people, though unable themselves to make their grievances known to the government, shall not have the privilege to employ and pay others for performing that service! But if it be right thus to deprive the Indian of the power to employ an advocate by cutting off the means of payment, this policy should not be retrospective. Let the law, rule, or custom be announced for the future guidance of the citizen, but *do not make it retrospective and give it effect upon contracts made, and services rendered, years before the law or custom was introduced.*

But our commissions amount to too large a sum. Our contract was for five per cent. or nothing—five per cent. if we recovered anything from the government—nothing if the Indians got nothing. If we had labored for years and recovered nothing, would any of those who now talk of our getting too much, have thought of paying us anything for our labor? *Not one cent.* If the sum be large it is our good fortune. What lawyer, having undertaken a great case for a contingent fee, and gaining it after years of labor, would not be justly indignant at being refused payment altogether on the plea that his fee was too large?

We appeal to every lawyer in Congress to make our case his own, and then say whether we ought not to be paid every dollar of our commissions.

But the Indians do not refuse payment; the United States will not let them pay!

We are told to go to individual Indians for payment. We have no contract with individual Indians. Our contract was with them through their chiefs and delegates as an aggregate body. Those chiefs and delegates have been recognised as having power to bind every individual of their clan or party in a contract with the government; and can that government, after such recognition, deny their power to bind them in a contract with its citizens? If our contract must go to the Cherokee country to be ratified by every western Cherokee, why was not the treaty of 1846 sent out to be ratified in the same manner? The power of the delegates was the same in the one case as in the other.

To send us to the Cherokee country with a virtual notice to the Indians that our contract is to be considered illegal and void, is at once to deny us all compensation. *Can the Indians be expected to recognise a contract which the government informs them is practically null and void?*

No; we look to the United States, who hold this money and have the order of the western Cherokees for the payment of our commissions, as the only source of relief. If the government could be sued, we could compel the payment by law; and will Congress refuse to act upon principles which govern courts of law and equity throughout christendom?

What must be the effect of this course of policy on the Indians themselves? Will they learn honesty by being informed that they are at liberty to repudiate their contracts? Are they to acquire respect for the laws, morals or religion of the white man, from being told that the acts of their chosen delegates are not binding upon them, and that they are at liberty to cheat their agents out of all compensation for valuable, laborious and long-continued services? Such are not the paths which will lead the Indians to the practice of honesty and virtue.

Finally, we cannot but look upon the United States as morally bound to see these debts paid out of the funds of the western Cherokees; and we cannot but feel that if they suffer us, with a full knowledge of the facts, to be deprived of that resource, we shall have a just claim for payment upon the Government itself.

AMOS KENDALL.
JOHN E. KENDALL.

FEBRUARY 10, 1849.

P. S.—There are other claims against the western Cherokees for services rendered and supplies furnished them in their aggregate capacity, while prosecuting their claim and seeking for a final adjustment since the treaty, a portion of which we know, and other portions we believe, are just and ought to be paid. Among them are the necessary expenses of the delegations which the delays of the Government induce them to send here from year to year, in the hope of hastening the action of the executive officers and of Congress.

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CONTRACT.

Whereas the Cherokee Indians who emigrated to the country west of the Mississippi river, under the protection and guarantees of treaties between the United States and the Cherokee nation in 1817 and 1819, confirmed by treaties with the Cherokee nation west of the Mississippi in 1828 and 1833, have claims upon the United States for wrongs done them in the violation of said guarantees under color of a treaty with the Cherokees east, concluded in December, 1835; and whereas said wrongs have not only deprived them of the lands which were granted and guarantied to them forever, but have put an end to their existence as a separate people and exposed them to annoyances, oppression and personal danger, in utter defeat of the main object in view, when they consented to abandon the home of their fathers; and whereas they are desirous of making their rights and condition clearly known to the government and people of the United States, in the confidence of receiving at their hands remuneration for the property of which they have been despoiled, and obtaining new guarantees to protect them in their property and persons; and whereas the very wrongs of which they complain have embarrassed every movement, through recognised authorities, to obtain redress, and deprive them of the means necessary to command it; and whereas, at a council held by a number of the chiefs, headmen and councillors of the western Cherokees, or Old Settlers, under the treaty of 1817, convened at the house of Mrs. Nancy Rogers, in the forks of the Verdigris and Grand rivers, on the 9th day of April, 1842, the following proceedings among others were had, viz:

"*Resolved*, That a delegation be appointed, to proceed to the city of Washington, as soon as practicable, to confer with the President of the United States on the affairs of the western Cherokee nation, and that this delegation be, and they are hereby vested with full power and authority to act for and in behalf of said nation, to effect an arrangement and final adjustment of their affairs with the United States government; that they have also full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things, these, the delegates representing the western Cherokees, are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present. Whereupon the following delegates were unanimously chosen in pursuance of the above resolution, viz: John Rogers, James Carey, sen., (or Chicken Cock,) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation:"

And whereas, at another council or convention of chiefs, headmen, and councillors of said Cherokees west, held at the house of Mr. Alexander

Foreman, mouth of the Illinois river, Illinois district, on the 7th day of November, 1842, the following resolution was adopted, viz:

"*Resolved,* That we agree with and adopt the resolutions and acts entered into by Captain John Rogers and others, on the 16th day of April, 1842. Further resolved, that John L. McCoy and Ellis F. Phillips be, and are appointed as a delegation, to be attached to the number already appointed, to proceed to the city of Washington, to faithfully execute and carry out all claims unadjusted on the part of the western Cherokees with the government of the United States:"

And whereas Messrs. Amos and John E. Kendall, acting as agents for claims in the city of Washington, having confidence in the justice of said claims and in the disposition of the government and people of the United States to make reparation to this much injured people, are willing to undertake the management of their case, for a compensation altogether contingent.

Now, therefore, this article of agreement entered into this twelfth day of July, 1843, between Captain John Rogers, John L. McCoy and Ellis F. Phillips, a majority of said delegates, for and on behalf of the said Cherokee nation west, of the one part, and Amos Kendall and John E. Kendall, of the District of Columbia, of the other part, witnesseth: that the said Amos Kendall and John E. Kendall do stipulate and agree, either separately or in conjunction with such other person or persons as have been or may be employed by said Cherokees west, to act as counsel in the prosecution of such claims to final adjustment before the Executive departments and the Congress of the United States, viz: To prepare and submit to the Secretary of War a full statement in writing of the nature and extent of said claims, and use all proper means to obtain from him a favorable report thereupon at the next session of Congress. To prepare for publication a full statement of the wrongs and claims of the Cherokees west, and when printed, put it into the hands of the members of the next Congress, and such other persons as they, the said A. and J. E. Kendall, may think proper: to prepare any memorial or memorials to Congress, setting forth said claims; to digest and draw up any statement or statements of facts or argument necessary for the information of that body, or either House, or any committee or committees thereof, or any commission to which the same may be referred, and in all respects to use due diligence and all proper means to obtain the favorable action of said committees and of Congress itself, and of any commission, not leaving Washington, and the same to renew and pursue until said claims shall be adjusted, or so long as there shall be any reasonable ground to hope for such adjustment.

In consideration whereof, the undersigned John Rogers, John L. McCoy, and Ellis F. Phillips, delegates duly authorized as aforesaid, do hereby, on behalf of said Cherokees west, covenant and agree to pay, or cause to be paid, the full commission of five per cent. to the said A. & J. E. Kendall, upon any sum or sums of money, or whatever else of value may be allowed and appropriated in full or in part satisfaction of said claims, to be paid from time to time, as appropriated or allowed; and the said delegates do hereby authorize and empower the said A. & J. E. Kendall, as agents and attorneys in fact for the said Cherokees west, to demand and receive from the treasury of the United States, or from the proper office or officer thereof, one-twentieth part of all sums of money which may be allowed and appropriated, or one-twentieth part of any stock, scrip, or any other species of funds, securities or annuities which may be allowed, to be made out and issued in their own names; and if lands or other property or any interest therein shall be granted in discharge of said claims or any part thereof, to demand and receive from the proper office or officer a full title to one-twentieth part thereof, it being the true intent and meaning of said delegates that the said A. & J. E. Kendall shall receive five per cent. or one-twentieth part of any and everything of value which may be granted or appropriated on account of said claims, to be received directly from the United States without any further act or authority by or from the said Cherokees west.

And the said delegates do further authorize and empower the said A. & J. E. Kendall, as agents and attorneys in fact of the said Cherokees west, to sign the names of the said delegates to any letters and memorials to the President, Secretary of War, Senate, House of Representatives, or other officer or individual necessary to the prosecution and allowance of said claims; and to execute any receipts, acquittances, or other instruments of writing which may be necessary to procure the payment or delivery to them, according to the true intent and meaning of this instrument, of one-twentieth part of the money, property, or evidence of right, title or claim to any money or property which may be appropriated or allowed in satisfaction of said claims in full or in part.

And it is further covenanted and agreed by said delegates on behalf of said Cherokees west, that they, the said Cherokees, shall execute any additional power or authority, if any be deemed necessary by the government of the United States, to enable the said A. & J. E. Kendall to receive and enjoy the commission aforesaid, according to the true intent and meaning of this instrument.

Witness our hands and seals at Washington, D. C., the day and date above written.

JOHN ROGERS, [SEAL.]
E. F. PHILLIPS, [SEAL.]
JOHN LOWRY McCOY, [SEAL.]

AMOS KENDALL, [SEAL.]
JOHN E. KENDALL, [SEAL.]

Signed, sealed and delivered in the presence of

J. E. DOW,
Justice of the Peace.

DISTRICT OF COLUMBIA, *county of Washington:*

On this twentieth day of July, A. D. 1843, before the subscriber, a justice of the peace, in and for the said county, personally appeared John Rogers, E. F. Phillips, John L. McCoy, Amos Kendall, and John E. Kendall, subscribers and parties to the above instrument of writing, and declared the same to be their free acts and deeds, the interlineations on the third page having been made before signed.

J. E. DOW, [SEAL.]
Justice of the Peace.

The undersigned delegates of the western Cherokees or Old Settlers, being a party to the treaty recently concluded to put an end to Cherokee difficulties, do hereby authorize and request the Secretary of War to pay the commissions stipulated for in the within contract out of any moneys which may be appropriated to pay the debts of the Old Settlers, or out of any moneys which may be found due to them under the said treaty, it being our intention that this contract shall be executed in good faith.

JOHN BROWN,
E. F. PHILLIPS,
his
WILLIAM + DUTCH,
mark.
his
RICHARD + DREW,
mark.
JOHN L. McCOY.

Witness:
NELSON ROGERS.
AUGUST 14, 1846.

The following report of the Commissioner of Indian Affairs has been sent to the Senate, referred to the Committee on Indian Affairs of that body, and ordered to be printed, since the preparation of the foregoing. Understanding that it could not be printed by the contractor until after the close of the present session, we obtained a copy, and annex it to this exposition:

WAR DEPARTMENT, INDIAN OFFICE,
February 8, 1849.

SIR: I have the honor to report upon the resolution of the Senate of the United States of January 18th, 1849, which is in the following language, to wit:

"*Resolved*, That the Secretary of War be requested to communicate to the Senate any information that may be within the knowledge of the department, in reference to claims made against the Cherokees who were parties to the treaty of August 6, 1846, (especially against that portion of the nation called "Old Settlers" or "western Cherokees,") for services or any other aid and assistance rendered the said Cherokees in the prosecution of their claim, which resulted in the treaty aforesaid. If such claims are based upon written contracts, he is requested to state whether these contracts were made by the duly authorized representatives of the Cherokees in their national or aggregate capacity, for the benefit of those who are made recipients by the treaty, in all moneys arising out of the settlement of their claim, and also whether, within the knowledge of the department, such contracts have been fully and faithfully complied with, as far as practicable, by the other parties named in them; and that he will communicate the evidence upon which he bases his opinion, with any papers in possession of the department, showing the extent of the services rendered and the character of the claims thus made against the moneys which may be awarded the Cherokees under the treaty of August 6, 1846."

With reference to the first general question, I have to state, that the only claims made against Cherokees who were parties to the treaty of August 6, 1846, which have been filed in this office, are those of S. C. Stambaugh and Amos and John E. Kendall, esqs., for services rendered that portion of the nation called "Old Settlers" or "western Cherokees." Those claims are based upon written contracts made by the duly authorized representatives of the said "Old Settlers" or "western Cherokees" for the benefit of those who are made recipients, by the treaty, of moneys arising out of the settlement of their claim. Copies of those contracts are herewith, marked A and B. Copies of the proceedings of conventions of the "Old Settlers" or "western Cherokees," from April, 1842, to July, 1846, and a copy of a certificate of a contract with S. C. Stambaugh, esq., by the delegation of said party, who signed the treaty of August 6, 1846, are also herewith, marked C.

The files of the department show, that the party of Cherokees styled the "government party" were represented before the commissioners who, on the part of the United States, negotiated the treaty of 1846, by Hon. Waddy Thompson, and that the "treaty party" were represented before the same commission, by George W. Paschal and Matthew St. Clair Clarke, esq.

No claim for services, however, appears to have been presented here by either of these attorneys, against the parties represented by them respectively; but the records show that a draft drawn by the treasurer of the Cherokee nation on this department, in favor of Mr. Thompson, for five thousand dollars, and made chargeable to the general funds of the nation, has been paid, in addition to another sum of five thousand dollars, which it is understood he received directly from the authorities of the tribe. Whether that amount was on account of services rendered by him for the "government party" or for some other object, was not stated in the treasurer's order, nor do the records or files state the object. There is nothing on file or of record, showing the amount which the "treaty party" paid their attorneys, but it has been verbally represented that, from the funds stipulated to be paid to the "treaty party," seven thousand five hundred dollars have been paid to Mr. Paschal and two thousand five hundred dollars to Mr. Clarke.

The only counsel or agents known to the department as being engaged in prosecuting the claims of the "Old Settlers" or "western Cherokees," were S. C. Stambaugh and the Messrs. Kendall. The former has been acting on behalf of that party since April, 1842; the latter since 12th July, 1843.

The proceedings of the first convention which appears to have been held by the "Old Settlers" for the purpose of petitioning the United States to restore to them the country entered upon by the emigrants under the treaty of 1835–6, or to obtain indemnity for losses and damages sustained by their dispossession, will be found in paper C, pages 1 to 7 inclusive. This convention convened on the 9th and adjourned on the 16th April, 1842. The third resolution adopted by the convention is in the following words:

"*Resolved*, That a delegation be appointed, to proceed to the city of Washington as soon as practicable, to confer with the President of the United States, and to petition Congress, if necessary, on the affairs of the western Cherokee nation, and that this delegation be and they are hereby vested with full power and authority to act for and in behalf of said nation, to effect an arrangement and final adjustment of their affairs with the United States government; and that they have also full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things, these, the delegates representing the western Cherokees, are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present. Whereupon, the following delegates were unanimously chosen in pursuance of the above resolution, viz: John Rogers, James Carey, sen., (or Chicken Cock) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation."

The fifth resolution is in the following words:

"*Resolved,* That this convention having full and entire confidence in the integrity and ability of Colonel S. C. Stambaugh, now at Fort Gibson, who has had a long and intimate acquaintance with the concerns of our people, they hereby nominate him as counsel, to be selected by the delegates in pursuance of the foregoing resolution, and that he be requested to accompany the delegation to Washington."

The same paper (C) contains the proceedings of the conventions held every succeeding year until the treaty of August, 1846, providing for the settlement of their claims, was concluded, and each convention confirmed the acts and proceedings of those which preceded it. The proceedings as detailed are authenticated by the delegation who signed the late treaty, as will be seen by the certificate appended, which confirmed the appointment of S. C. Stambaugh as counsel and agent in April, 1842, and continued by subsequent delegations, as well as that of the Messrs. Kendall. In the certificate of the delegation, (see pages 7 and 8,) made four days after the treaty was signed by them, "they hereby declare, under the authority vested in them, that all contracts or liabilities incurred by them, or any of their predecessors, for the benefit of the western Cherokees in their aggregate capacity, shall be paid out of any moneys which have been or may hereafter be found due to the said western Cherokees or Old Settlers; and the Secretary of War is hereby authorized to cause the same to be paid." The contracts hereinbefore referred to are the only papers on file in this office purporting to exhibit a claim against the "Old Settlers," or "western Cherokees," in their collective capacity. They are contingent in their character, as the "Old Settlers," as such, have no *national* or *annuity* fund, out of which to pay for services or other aid which might be necessary to procure, in the prosecution of their claim.

The files of the department attest the assiduity and ability with which Messrs. Stambaugh and Kendall attended to the duty intrusted to them; and I think it highly probable that the "western Cherokees," or "Old Settlers," are greatly indebted for the stipulations made for their benefit in the treaty of 1846, to the researches and persevering efforts of their counsel.

The evidence upon which I have based my opinion, is my knowledge of the personal exertions of the counsel named, and that shown in the accompanying papers, to wit: Memorial of the western Cherokees, prepared by S. C. Stambaugh, esq., marked D; Senate Doc., 29th Congress, 1st Session, No. 298, pages 19 to 73 inclusive, being arguments of Messrs. Stambaugh and Kendall in behalf of the western Cherokees; arguments and other papers submitted by the said counsel to the commissioners who negotiated the treaty of 1846, marked E, F, G, H, I, J, K, L, and M; letter of 4th May, 1848, of S. C. Stambaugh, esq.; letter of Messrs. Stambaugh and Kendall, of 8th June, 1848, to the President of the United States; and the memorial of western Cherokees, or "Old Settlers," to the President, of 4th August, 1848.

The accompanying papers, with the exception of the Senate document, belonging to the files of this office, it is respectfully requested that they be returned here, after they shall have been acted upon by the Senate.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. W. L. Marcy,
Secretary of War.

[C—referred to in No. 5.]

In Senate of the United States—*August* 10, 1850.

The Committee on Indian Affairs, to whom was referred the memorial of Amos and John E. Kendall, and S. C. Stambaugh, asking payment of their claims against the "western Cherokees," have had the same under consideration, and respectfully report:

That on the 6th day of August, 1846, a treaty was made between the United States, by commissioners appointed on her part, and the Cherokees, consisting of three distinct recognised parties or factions, each of whom had a separate and distinct interest, and were represented by distinct delegations, who executed the treaty as parties, and prosecuted their claims through different counsel. These divisions had existed for many years, and originated in the treaty of 1835, made with the eastern Cherokees. These parties to the treaty of 1846 were the "government party," or "eastern Cherokees;" the "treaty party," and the "western Cherokees," or "Old Settlers," being those who had emigrated to the west under the treaties of 1817 and '19, and were the undisputed occupants of the country when the treaty of 1835 provided for the final emigration of the remaining or eastern Cherokees to the west. To prosecute their claim, and procure redress for their wrongs, the western Cherokees employed S. C. Stambaugh and Messrs. Amos and John E. Kendall as their agents or attorneys, investing them with full power and authority in the premises, and stipulating to pay them a certain commission upon all amounts which they might recover or get allowed by the United States. These contracts were entered into in writing, by the delegates duly chosen by the national council, and specially authorized to employ counsel. Their contracts with these persons appear to have received the subsequent assent of several national councils, and again ratified by the delegates who made the treaty, and the payment of their compensation directed out of any moneys which might be due them. These contracts, copies of which are annexed, appear to have been fairly made—not unreasonable in their terms, since they were entirely contingent in their character. When these engagements were made, the chances were that nothing would ever be recovered. The prosecution of these claims, it was evident, would be a work requiring much time, labor, and expense. The Commissioner of Indian Affairs, in his special report made to Congress February 8, 1849, fully attests the ability and fidelity with which they discharged their duty. For the full details of the facts connected with this subject, the committee refer to that report.

Inasmuch as these contracts appear to have been made for a necessary purpose, for a good consideration not forbidden by law, and in terms which have been faithfully performed by the memorialists, the committee are of opinion that they should be discharged according to their tenor, if any redress be left in the power of Congress to afford. Upon this question the following observations are submitted:

When these engagements were entered into, the western Cherokees were a distinct party, forming, in fact, a separate political body, and directing their separate interests through the action of a "national council." As such they were recognised, through their delegations and their agents, from 1842 until and at the making of the treaty of 1846, in which the United States regarded them as having distinct interests and competent to release their separate claim to the country east, and agree to an indemnity for it. This same authority had created this debt against the "western Cherokees," and secured it by an equitable lien on the funds to be paid them under that treaty, of which the United States were fully cognizant. At this time it was a debt against the "western Cherokees," for which any national fund of theirs would be liable generally, but that under the treaty *specifically.* By that treaty provision was made for setting apart the sum of $50,000 to discharge their national debts; but this provision was stricken out by the Senate, the effect of which was to appropriate the whole of their money due under that treaty to a *per capita* distribution. Thus the *treaty fund was gone.* The clause of the treaty which merged all the different parties in one common nation, and under one government, destroyed their separate political existence, "except for the purpose of executing the treaty." Thus every national fund was gone, and the nation extinguished. Against whom did the debt survive? Not against the individual Cherokees, for they were not parties to it. Not against the nation, for that was extinct. Not against the whole nation of Cherokees, for the union was political, and had no reference to the separate debts of its factions; but the debt survived, and against the fund pledged for its payment, or, in default of that, against the United States. The Cherokees could not by the treaty release their obligation, nor could the United States, neither debtor nor creditor, release it. But they could by the treaty enter into an obligation *inconsistent with its payment,* and thus become responsible for it themselves. Other means of payment being exhausted, either the United States are liable, if the treaty has *released the fund,* or the fund is liable, if the treaty has not destroyed the lien. That there was a specification and appropriation of so much of that fund as was necessary to pay the debt, cannot, we think, be questioned. It was created by an authority competent to do it. The pledge was irrevocable. It was not a mere agency to receive, but an equitable transfer of so much of the fund. It was a security for payment; and if the United States have discharged it, they are liable for the debt. But the committee are of opinion that the treaty does not necessarily exempt the fund, provided under it, from the satisfaction of those just claims charged upon it, by competent authority, prior to the treaty. It may be regarded as a stipulation to pay in a particular form the *balance* justly due the Cherokees. This balance is the residuum after paying those claims, which, by the application of the principle of law to such case, are a lien on the fund. So far as respects these debts, the United States is not only the debtor, but the trustee. The whole fund is a trust, for the proper disbursement of which this government is bound, according to the terms fixing its disposition. The first of these is the contract with the memorialists, directing the payment of a certain amount to them by the United States: the other, the 5th article of the treaty of 1846, directing a *per capita* distribution. Both compacts were made by the same authority, and both equally binding as a disposition of the fund to which they refer; and both can be executed as a trust, which the United States can discharge by administering one, subject to the prior obligation to perform the other.

The committee are aware that the opinion has been entertained that these debts were destroyed by the treaty of 1846, and that the distributive shares of the treaty fund have become private property, beyond the control either of the Cherokees or of Congress, and that a payment of these claims would be a misapplication of the treaty fund, for which the United States would be responsible. If this be so, they are also liable for the destruction of the debt by treaty. As the United States, it would seem, are liable at all events, it is surely better to provide for the payment out of the fund originally and properly charged with it, and thus prevent payment out of the treasury. In such case, the claim of the Indians for reimbursement would scarcely be urged effectually. This would do effectual justice to all parties, and settle this prolonged and intricate controversy with the Cherokees while the whole subject is yet in our hands. The committee believe that to set apart a portion of this treaty fund, to enable the Indians to discharge their national debts contracted and charged by competent authority upon the fund *before* it became the subject of *individual property*, would not only be just, but a true discharge of the trust which the United States have assumed.

The committee therefore recommend that in the proper appropriation bill a provision should be adopted, setting apart a certain amount of the sum due the western Cherokees, for satisfaction of these claims.

No. 6.

WASHINGTON, *April* 29, 1851.

SIR: It is with the utmost reluctance that I trouble you further in relation to the compensation due to the counsel of the western Cherokees; but the injustice already done them being rendered more glaring by a discrimination likely to be made in favor of the counsel of the eastern Cherokees similarly situated, I feel constrained to present some additional views, in the hope that equal justice may be done to all.

Yesterday, by permission, I read the Attorney General's opinion in favor of allowing the claim of the counsel of the eastern Cherokees out of their *per capita* money before distribution, a small portion thereof excepted, and applying to that portion a principle which, if carried out, cuts off the counsel of the western Cherokees from all compensation whatsoever, unless they can collect it from the individual Indians.

Of the validity of our contract and the justice of our claim, I believe neither you nor the Attorney General, nor any other man who has examined it, entertains a shadow of doubt. We had a *vested, undisputed* and *indisputable* interest in this fund, by virtue of a contract existing not only before the legislation of Congress, but the confirmation of the treaty—*an interest of one-twentieth part, which never was for a moment vested in the Indians, having accrued to us the moment the residue accrued to them.*

What, then, does this *obiter dictum* of the Attorney General, if to be considered a decision, amount to? Nothing short of this: that the *Senate intended to commit a fraud when they struck out of the treaty the clause providing for the payment of the counsel fees! And that Congress intended to consummate that fraud when they adopted the obnoxious proviso!! And that the Executive is now bound to clinch the fraud beyond redress, by construing the action of the Senate and Congress as intentionally fraudulent!!!* For what is the *law* but the intention of its makers? And if a construction of the law produce *palpable fraud,* what is it but saying that the *object* of the law-giver was fraudulent?

Now, we maintain that fraud is not to be imputed to Congress by the Executive; that a construction of the law consistent with honest intentions is to be earnestly sought after; and in a palpable case, where none such can be found, the execution of the law ought to be deferred until the matter can be again submitted to Congress.

In this case no cause for delay exists, for there is a construction of the law consistent with honest intentions on the part of the legislature. It is not in an *assumption,* but in a *fact;* and that fact is, that *one-twentieth part of this fund never was vested in the Indians at all, but was vested in us from the beginning.* It was assigned before the treaty was formed, and the provision declaring that the *per capita* allowance "shall not be assignable" could not affect it; no Indian could be "entitled to it," because his right in it was already extinguished.

The real *per capita* fund was what was left after paying those prior assignments based on considerations which no man could call in question; and to that portion of the money *alone* should the restrictions of the treaty and the law be applied.

Let us consider what *reason* there is in the character of the claims, or in the services rendered, for a discrimination between the counsel of the eastern and western Cherokees, to the disadvantage of the latter.

The claims were identical in their character, being compensation due to different parties of Cherokees for their country east of the Mississippi. The western Cherokees met in council, chose a delegation to represent them, and authorized them to employ attorneys to prosecute their claims.

The eastern Cherokees never met in council, and, as individual claimants, never appointed a delegation or authorized the employment of attorneys.

The western delegation, thus authorized by the individual Indians, did employ attorneys, and, by explicit written contracts, assigned to them an interest in the thing to be recovered in compensation for their services.

The attorneys for the eastern Cherokees were employed by the authorities of the Cherokee nation, who had no power to alienate moneys due from the United States to *individual* Cherokees; and it is very remarkable, that while the right of the government to pay the *whole fund* to those authorities is denied, your right to pay a *portion* of it to *their order* is affirmed.

The difference, then, between the counsel of the western and eastern Cherokees, is this:

The counsel of the western Cherokees were employed by those *having authority*, and payment of their compensation *is refused*.

The counsel of the eastern Cherokees were employed by those *not* having authority, and *they are to be paid!*

The delegation of the western Cherokees were authorized to dispose of individual rights "the same as if all the people were present;" and their requests, assignments and contracts are disregarded.

The Cherokee authorities had no power whatever to assign away the individual rights of an eastern Cherokee to *per capita* money; and yet their contracts, based on assumed authority, are to be recognised and made effective.

The authorities of the nation represent the nation. It is neither the nation, nor the individuals making up the nation, to whom the *per capita* money of the eastern Cherokees is due; but it is the *individuals* composing *a part* of the nation. As well might the Ross delegation barter away the western Cherokee money as the eastern, having no more authority in the one case than in the other.

I am sure the Attorney General has overlooked this feature of the case, when he rests it upon the opinion of Attorney General Gilpin, of March 26, 1840. In the case there put, it is assumed that the *Indian himself* has employed the attorney; that he is "a duly constituted attorney," and that "the contract between him and his principal is free from fraud," where the work "has been done under the stipulation or with the *bona fide* understanding," &c. To make those cases analogous to the present, it must be shown that each eastern Cherokee must, by himself or some authorized delegation or agent, have employed the counsel and contracted for the payment of his fee out of the moneys to be allowed. No such thing has been done or pretended to have been.

We had rested with great confidence on this opinion of the Attorney General as conclusive in favor of the direct payment of our claim. We had a contract with each western Cherokee by his authorized agents, recognised by the United States, (in making with them the treaty of 1846,) as competent to dispose of all the rights of their people in this claim; that contract assigned to us one-twentieth part of the claim, and authorized us to receive it directly from the United States. There was no pretence of fraud, imposition or extravagance in the contract, and the consideration had been fully paid. In this opinion we found the law to be expounded thus:

"If the person presenting the claim was a duly constituted attorney of the Indian, and the department is satisfied that the contract between him and his principal is free from fraud, and is a just compensation for services rendered, in such case he has an interest in the fund which the department ought to recognise; and it should not, by paying the whole amount to the Indian, subject him to the probable danger of loss and the certainty of much expense and delay."

Is not this precisely our case? Are we not "*duly constituted attorneys*" of the Old Settlers? Is not our contract "*free from fraud?*" Does it give us more than "*a just compensation for services rendered?*"

Again, in the same opinion we find the law laid down thus:

"Certainly, where an attorney has rendered an important service, collected the evidence and been instrumental in securing a claim which might otherwise have been lost, and where this has been done under the stipulation or with a *bona fide* understanding that he was to receive the amount to which he was entitled directly from the United States, he has an interest in the fund which the principal himself cannot revoke, and which the department is bound to recognise."

Precisely our case! We have "rendered an important service, collected evidence, and been instrumental in securing a claim which otherwise might have been lost;" and all this we have done not only with "a *bona fide* understanding," but with a written "stipulation" that we were to receive the amount to which we are entitled directly from the United States. Yet we are told that an interest which was thus declared to be *irrevocable, has been revoked;* that instead of being bound to *recognise* that interest, the department is bound *not* to recognise it; and that we are to be subject, not to the danger only, but to the *certainty* of "loss" as well as "much expense and delay" in endeavoring to collect it from the individual Indians. And this aggravated wrong is to be inflicted on the ground that Congress has so legislated as to *annul private contracts, destroy vested rights, revoke assignments which in all honesty and by settled law are irrevocable, encourage dishonesty among the Indians, and aid them in defrauding citizens of the United States,* whose right it is the duty of the government to protect! All this must be assumed by the executive authorities, carrying with it ample but unavoidable admission that *they* are bound to consummate the fraud and outrage by *their acts.*

Now we maintain that it is the duty of the Executive, if possible, to construe the law so as to make it consistent with moral principle, contract obligations, and vested rights. Is not such the practice of our courts? And if a statute seem to violate a vested right, do they not treat it as no law in that respect? And in a palpable case, is there not the same law for the Executive as for the courts? Is it not, at least in the first instance, as much the duty of the Executive to construe the law as of the courts? And if a construction present itself which palpably and undeniably is in subversion of private and vested rights, is it not as much the duty of the Executive as of the courts to reject it?

It is not to be conceived that it was the object of the parties to the treaty of 1846, to make a distinction between the *per capita* money of the eastern and western Cherokees, so far as regards the mode of payment. There was no reason why they should be put on a different footing; and although the language employed is somewhat different in the two cases, it was doubtless understood to lead to the same result.

The proviso to the appropriation for paying the western Cherokee claims and a portion of the eastern, was considered as a mere injunction upon the Executive to pay the money in strict accordance with the treaty; and when it was offered at the last session of Congress to the appropriation for the payment of the residue of the eastern Cherokee claim, it was opposed and defeated on that very ground. Instead of making an argument on that point, ourselves, we submit certain extracts from the report of the discussion which took place on the occasion:

Mr. BELL: Mr. President, if I understand this question, it is not deserving of any further discussion, whether this amendment shall be adopted or not. As I understand it, the appropriation which is intended to apply, is required, by the treaty of 1846, to be paid *per capita.* I presume that will be a question for Congress—to control the Executive government, the authority of the government to provide the mode of payment of this money. The treaty says:

"The United States agree to make a fair and just settlement of all moneys due the Cherokees, and subject to the *per capita* division under the treaty of the 29th December, 1835, which said settlement shall exhibit all money properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spoliations, removal and subsistence, and commutation therefor, debts and claims upon the Cherokee nation of Indians for the additional quantity of land ceded to said nation, and the several sums provided in the several articles of the treaty to be invested as the general funds of the nation, and also all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of six million six hundred and forty-seven thousand and sixty-seven dollars; and the balance thus found to be due, shall be paid over, *per capita*, in equal amounts to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835, and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto."

I do not understand that the proposition of the Senator from Wisconsin (Mr. Walker) goes further. It is merely an act of supererogation, if it goes no further than the treaty; and I should doubt the propriety of attempting it.

At a subsequent stage of the debate, Mr. Bell said: The executive officers of the government are not thinking of paying this money over to the Indians, or any portion of the claim of these agents. It goes to a regular officer of the government—the agent of the Cherokees, or the superintendent of the Indian tribes of the west generally; and it will be paid out *per capita* upon his responsibility, the government being responsible that its officer shall pay it *per capita* according to the treaty. So some half a million was paid at the last session of Congress, as I understand, and there has never been any danger upon this subject. This amendment, therefore, as I stated at first, is, in my opinion, a work of supererogation.

Mr. Rusk said: The amendment as it stands requires the accounting officers of the treasury to pay the amount ascertained to be due under the provisions of the treaty; and that treaty is itself a provision directing the accounting officers of the treasury to comply with its terms; therefore, this amendment is unnecessary in that respect. I have had no time to investigate its principles, to see what its operation would be with our relations with the Cherokees; and therefore, for fear there might be mischief in its operation, and believing that it can give the Indians no further security than they have now, I shall vote against it.

Mr. Ewing said: And it is equally clear in this case that no amendment of the kind here suggested is at all necessary. The treaty provides that the payment shall be made in a particular manner, *per capita*. We go on and provide a fund, out of which this payment is to be made. The Executive will see that it is paid according to the treaty. That is his duty. We are not to direct him how it is to be done. And if at any time and under any circumstances there may have been executive officers that have not done their duty, what has that to do with it? Nothing at all. They ought to do their duty; and if they have not done it, I trust their successors will.

The friends of the proviso also admitted that it went no farther than the treaty, and advocated it on the ground of abundant caution.

Mr. Walker, who offered it, said: We have treated to pay this fund *per capita:* and the only question is, whether we shall follow the treaty, or make a payment in violation of the treaty so that the money may never go really as the treaty stipulates that it shall go; and hereafter we may be liable to be called upon to pay it over again.

Mr. Borland said: The treaty provides for paying this amount *per capita*, in equal amounts to the Indians mentioned in the treaty, heads of families, &c., and their legal representatives, to whom, and not to the nation as a body, the amount is due. The provisions of the bill, therefore, I think, are entirely proper as far as they go; and I think it is necessary to adopt the amendment of the senator from Wisconsin, because it puts the matter at rest and beyond all doubt. It declares to the Indians, in so many words, that the treaty shall be carried out in letter and in spirit. I cannot understand why any opposition is made to the amendment offered by the senator from Wisconsin by senators who seem to approve of the course of having these agents employed, and to entertain a high opinion of the value of their services to the Indians and to the United States, unless it be that if this amendment be not adopted, the terms of the treaty will not be complied with.

Mr. Turney said: We had better take for our guide the treaty as it is, comply with it as it is, and pay the money to the Indians who are entitled to receive it. That is our contract, that is our treaty; and such being the case, I shall vote for the amendment of the senator from Wisconsin, with a view of effecting that object.

On the ground assumed on the one side, and admitted on the other, that the proviso was not a whit broader than the treaty, it was rejected.

After these declarations and admissions, Mr. Walker the next day offered another proviso, which was adopted in the following words, viz:

"Provided further, that this item shall be paid in strict conformity with the treaty with these Indians of the 6th August, 1846."

Both sides in the Senate, therefore, considered this proviso as meaning the same thing—no more and no less—as that which had been the day before rejected; no more and no less than that which had been attached to the appropriations of the preceding session, as not restricting or enlarging the powers of the Executive, but as merely a declaratory injunction.

Notwithstanding all this, the provisos are now construed to mean very different things—the one admitting payments to agents, and the other prohibiting it! Far be it from us to contest the right of the agents of the eastern Cherokees to be paid for their services; but we rest their rights and our own on a principle *above and beyond both the provisos and the treaty*, which *should govern their construction.* That principle is, that *our contract gave us a vested right in this Cherokee fund, and that the treaty and the provisos ought to be, and reasonably can be, so construed as to protect that vested right.*

The Indians had assigned to us a twentieth part of their claim *before the treaty declared that it should not be assignable;* and the treaty should not be construed as embracing that interest in the restriction. It was *no longer theirs to assign;* it was no part of the *per capita* money to which they were "entitled."

But perhaps we are wrong in *persecuting* you further upon this subject.

Our apology must be the deep sense of injury we feel in the causeless denial of justice, not by any one in particular, but by our government in general, rendered the more galling by the discovery of a mode by which justice can be done to other claimants similarly situated, whose claims, to say the least, are not a whit more meritorious than our own.

I will not repeat the request that our case be referred to the Attorney General; but I beg of you the favor to submit this, with my former communication on the same subject, to the Secretary of the Interior, for his consideration and such action as he may deem just and proper.

Not doubting your disposition to promote the ends of justice in this case in any way consistent with your sense of official duty, I remain,

With high consideration, your obedient servant,

AMOS KENDALL.

Hon. LUKE LEA,
Commissioner of Indian Affairs.

No. 7.

WASHINGTON, D. C., *May* 5, 1851.

SIR: Since the argument of A. Kendall, for the payment of counsel's fees, was submitted to the Commissioner of Indian Affairs, I have found on page 581, Attorney Generals' Opinions, one made by Mr. Wirt, dated March 29th, 1827, and one by B. F. Butler, dated May 17th, 1836, which I think sustains the payment of our fees in the case of the western Cherokees, which I beg leave to call your attention to.

In the opinion of Mr. Wirt, the law directs "the payment to be made to the witnesses." "Yet," he says, "if Messrs. Key & Cox have been recognised as the attorneys-at-law of these witnesses, I think it will make the payment to them perfectly safe." What is our case? We were recognised by the government before and after the treaty of 6th August, 1846, as the attorneys of the western Cherokees. It will, therefore, I think, make the payment to us perfectly safe of the stipulated amount of our contract with these people.

Mr. Butler says in his opinion: "Mr. Rogers may at any time revoke the letter of attorney to Mr. Lawrence, *except as to the admitted amount of Mr. Lawrence's commission—five per cent.*"

Our principals have never attempted to revoke the admitted amount of our stipulated commissions. On the contrary, they have urged the government, by all the authority they possess, to pay them. Can, then, our government say they will not do it? And that, too, when, by refusing, they hold open these very claims as good and valid against the government of the United States itself, which, if now settled, costs it not a dollar.

It seems to me that justice demands the payment of these just debts; and it appears, also, that it is the best policy of the United States, now that they have this money in their hands, to settle all these claims, by paying the attorneys their portion of the fund, and distribute the balance as the Indians desire.

Very respectfully, your obedient servant,

JOHN E. KENDALL.

Hon. LUKE LEA,
Commissioner of Indian Affairs.

No. 8.

WASHINGTON, D. C., *May* 29, 1851.

SIR: Can you do anything for us, since your conference with the Attorney General, in relation to holding suspended the amount of attorneys' fees for western Cherokees until allowed by them or until Congress meets? I feel satisfied, if this is done the Indians will pay all their just debts, be satisfied themselves, and give satisfaction to all their employees and creditors, and relieve the government from any further trouble in relation thereto.

If done, it is desirable that it should be done immediately, this being all that is desired to complete the instructions, at the Indian Office, to Col. John Drennen, for the distribution of the money.

With high consideration, I am, sir, your obedient servant,

J. E. KENDALL.

Hon. A. H. H. STUART.

Referred to the Commissioner of Indian Affairs.—Department of the Interior, June 18, 1851.

No. 9.

WASHINGTON, *May* 28, 1851.

SIR: The instructions to Col. John Drennen, agent for the payment of the *per capita* money to western Cherokees, are in course of preparation at the Indian Office. The Commissioner is not willing, without authority from you, to insert a clause authorizing the amount of the debts of these people, in their aggregate capacity, created by their duly authorized delegates, to be retained until these people agree to pay them, or until Congress can have time to express an opinion in relation thereto. Can you not give such authority? which will be the next best thing to the payment of the money here by the government, and one which, I think, Col. Thompson will be willing to agree to.

Respectfully, &c.,

J. E. KENDALL.

Hon. A. H. H. STUART,
Secretary of the Interior.

Referred to the Commissioner of Indian Affairs.—Department of the Interior, June 18, 1851.

No. 10.

WASHINGTON, *June* 19, 1851.

SIR: In our conversation yesterday, you were kind enough to mention your purpose of sending out to the Cherokee country a trustworthy agent to represent to the Indians their obligation to pay the claims of their agents according to their contracts, and also your disposition to send some person who shall be acceptable to the claimants.

Considering that the money to pay the western Cherokees has for some months been at Van Buren, in Arkansas; that it cannot be considered entirely safe on that frontier; that nothing is wanting but the revision of a census already taken to complete the arrangements for payment; that it is now nearly five years since their right to this money was established by the treaty of 1846; that they are, under the act of Congress making the appropriation, entitled to interest until it is paid; and, moreover, that Col. Stambaugh and my partner in this claim, John E. Kendall, are now in the Cherokee country, or at Van Buren, awaiting the payment at a very heavy expense—justice to all parties seems to require that this matter be brought to a conclusion with all practicable despatch.

I therefore propose, that instead of sending out a special agent to look after the interests and rights of creditors of the western Cherokees, special instructions to that effect be sent to Col. Drennen, in whom I believe all the claimants have full confidence. The payment of the western Cherokees may thus be completed while the preparations for paying the eastern are in progress, thus expediting the business, as it would be inconvenient if not impracticable to pay both at the same time.

I deem it expedient to recapitulate the grounds on which the claim of Amos and John E. Kendall rests, that you may have them before you in a condensed form, while preparing any instructions to Col. Drennen or a special agent.

In 1843 we were agents for the prosecution of claims against the United States. John Rogers, the chief of the western Cherokee delegation, sought us out and solicited our services in the prosecution of their claim, exhibiting their authority to employ counsel and bind their people the *same as if every individual were present and assenting to their contracts.* Having examined their claim sufficiently to satisfy ourselves of its justice, knowing that our government had recognised and protected the rights of their citizens who had rendered services to Indians under contract, written and oral, and believing that such agreements would still be held sacred, we entered into a formal written contract with the western Cherokee delegation, to advocate their claims for a commission of "five per cent. or one-twentieth part of any moneys, or whatever else of value" that might be recovered, coupled with the power of attorney to receive it directly from the United States. Having no funds, the delegation could contract for none other than a contingent compensation, nor could they give any security other than an irrevocable power of attorney connected with the contract. Commissions on Indian business had generally been ten and sometimes twenty per cent., and the almost hopeless condition of this claim would have justified a higher rate. It was inconsistent with the principles on which the government had acted for many years, and had been repeatedly decided against by the Indian Office, under the sanction of the War Department.

But so confident were we that we could convince the whole world that the government had been wrong, and that, after years of labor, we should recover a large amount, that we agreed to make the effort for so very moderate a commission, well secured, as we thought.

The records and files of Congress, the newspapers of that period, the records and files of the Indian Office through three successive administrations of the War Department, will attest the fidelity and zeal with which, on all fitting occasions, we endeavored to promote the interests of our clients. It was the labor of months and of years. But the government was convinced that it had done the western Cherokees grievous wrong, and sought, by a commission, to negotiate a new treaty in 1846, to extricate itself from the dilemma in which its own errors had placed it, and make some reparation to the Indians.

Of the appointment and intended sitting of that commission we received official notice as the agents of the western Cherokees, and represented them before it during the negotiation.

Against a limitation to $50,000 in the funds set apart by the original treaty to pay their debts, the western Cherokees loudly protested, but the United States commissioners made it a *sine qua non*. When that limited provision was struck out by the Senate, leaving them without means to pay their bills for board, they refused to concur in it until the government secured to them an advance of $20,000 for their immediate wants; and even then their assent to the amended treaty was given only because the condition of their affairs was desperate, and they despaired of any thing more liberal to themselves or just to their creditors. To exhibit their own good faith and throw the responsibility for a non-performance of their contracts on the United States, they again recognised those contracts, and requested the proper department to pay the consideration out of any moneys which might be found due under the treaty to the western Cherokees.

Without attributing to any one fraudulent intention or improper motive, let us look at the position of the United States in this affair.

Our contract was made with a delegation of western Cherokees, authorized to bind all and each of their people. By subsequently making a treaty with them, the United States recognised them as possessed of such plenipotentiary powers.

As security for the payment of our commissions our contract was connected with a power of attorney, authorizing us to receive them directly from the United States. By established law such a power is irrevocable. It has been so decided not only by the British courts, but by the Supreme Court of the United States. (See 2 Espinasse, Nisi Prius, p. 565, and authorities referred to. Also Hunt *vs*. Rousmanier, 8 Wheaton, pp. 201, 216.) The same principle is asserted in Attorney General Gilpin's opinion of April 20, 1837.—(See Opinions, &c., pp. 1113, 1114.) And this principle, it is insisted, is just as applicable to our contract, as if it had been a contract with an individual.

When the delegation objected to a limitation which might be inconsistent with their contracts, the United States insisted upon it. When the treaty was so mutilated as to be wholly inconsistent with their contracts, the United States procured their acquiescence partly by an advance of money, and partly by assuring them they could hope for nothing better. True to their faith, they still prayed that their contracts might be regarded; but one branch of the Government steps in with a proviso which seemingly forbids it, and another says this proviso is conclusive on its executive action.

But if the constrained assent of the western Cherokees to the treaty as it stands, is to be construed as a voluntary act, it amounts to nothing; because our contract and power of attorney were, in law, irrevocable by any act of theirs, voluntary or involuntary.

The United States, therefore, cannot protect themselves under the plea that the Indians have revoked our power of attorney or attempted to do so. It is *themselves* who have done us this wrong. Their interference, to prevent our being paid, stands out as an act of *naked power* without apology or pretext. It has not the excuse of the Turk, who robs to replenish the coffers of a Pacha or a Sultan, for the United States profit nothing by this operation. They do not put a dollar in their treasury, or save a dollar; on the contrary, they expose themselves to a just claim upon their own treasury for every dollar of our money which they may pay out to the Indians.

I cannot believe that Congress intended, by their provisos, to inflict this atrocious wrong; and I hoped, as I had no doubt was the object of the mover, that they might be confined in their operation to cases where parties are to represent individual Indians under agreements or powers of attorney executed after the treaty. If, however, the Executive should find the language of the proviso too plain to permit our case to be an exception, still, in view of the palpable and irreparable wrong and injury which would be produced by paying out to the Indians moneys which are unquestionably ours, I did hope that the Executive would feel it a duty to retain the sum due to us, until Congress could construe its own provisos. If such an order were given now, and the Indians informed that it was on the ground that the moneys withheld clearly belong to their agents, they would probably assent to the payment and prevent the necessity of an appeal to Congress.

If you deem that course inadmissible, then I trust to the views already expressed by you, for instructions of the most decided character to Col. Drennen, or any special agent you may appoint. And if, as I hope, the duty shall be intrusted to Col. Drennen, I beg that the Indian Office may be at once directed to prepare the necessary instructions, to the end that this business, already so long protracted, may be brought to a speedy conclusion.

With high consideration, your obedient servant,

AMOS KENDALL.

Hon. A. H. Stuart,
Secretary of the Interior.

Referred to the Committee on Indian Affairs, June, 1851.—Department of the Interior.

Washington, *July* 1, 1851.

Sir: My deep interest in the matter must be my apology for troubling you with one other suggestion, in relation to the amount due from the western Cherokees to their counsel.

My nephew and partner went to New Orleans when the remittance for the payment of the western Cherokees was made to Colonel Drennen, with the view, if practicable and expedient, of injoining the amount due us in his hands. He informed my nephew, however, that he would not obey an injunction if obtained, in consequence of which the design was relinquished.

The suggestion and request I have to make now is, that Colonel Drennen may be instructed not only to obey an injunction which may be obtained in our case and in that of Colonel Stambaugh, but that, in case of difficulty with the Indians, he will give time to apply for and obtain one before making payment. I think that such instructions, coupled with a strong expression of opinion from your department, that these debts ought to be paid, would prevent all trouble.

With high consideration,

AMOS KENDALL.

Hon. A. H. H. Stuart,
Secretary of the Interior.

WASHINGTON, *August* 17, 1851.

SIR: I am impelled, by the urgent appeals of the creditors of the western Cherokees, to address you again on the subject of their claims.

As was expected, from the encouragement to fraud held out to them by the United States, a spirit of repudiation has sprung up among them, and has extended until all hope of the voluntary payment of their principal debts is extinct. It seems that this spirit first exhibited itself in threats against the Committee of Claims, raised under the instructions of the Indian bureau, and in denunciations of Colonel Drennen, the superintendent, and finally proceeded to a convention of delegates superseding that committee. This convention resolved that $30,000 of their money should be set apart to pay their own delegations to Washington, and other debts due to Cherokees; but, as I understand it, not a dollar to be paid to citizens of the United States—certainly not a dollar to the counsel, to whose arduous labors they are indebted for every dollar they are about to receive.

Surely, this case has no parallel in the history of this government or of any other not thoroughly barbarian. You—I mean the government—send ministers to civilized nations, and threaten reprisals and war to compel the payment of debts due to your citizens. You send armed ships to the other side of the globe to punish, with fire and sword, the untaught barbarians, for pursuing their trade of plunder upon your merchants. Yet, here at home, you invite, and encourage, and sustain a half civilized people under your protection, in refusing to pay their debts to your citizens—debts which you know and acknowledge to be as just as were ever due from man to man. You force upon their delegation, in spite of their remonstrances, treaty provisions, enabling and encouraging their people to repudiate solemn contracts; you follow it up with legislative provisions, implying that these debts ought to be repudiated; and now, with the money in your hands, you plead your own wrong as a justification for permitting the Indians to consummate a fraud upon their creditors.

The government found here a delegation authorized to employ counsel and treat with you, binding their people the same as if each individual were present and assenting; you avail yourselves of the full powers of that delegation for your own purposes, but you treat as void for any other purpose. You tell the western Cherokees that the contract of their delegation with the United States is binding, but that their contracts with their counsel, under precisely the same authority, are not binding. You tell them that they are irrevocably bound to accept in full from their country the sum of money which the contract made with you by their delegation provides for them; but that they are not bound to pay a dollar of the consideration which the same delegation, acting under the same authority, agreed to pay their counsel for convincing you that you ought to pay them anything!

Such is the language which the *acts* of the government hold to the western Cherokees. Is it to be wondered at that *the language of acts* has more influence with this untutored people than *mere words?* Is it at all surprising that they think it *right* to repudiate their contracts, when you tell them they have the *power?* Are they likely to feel very heavily the guilt of a fraud committed, when their Great Father points out the way and shares the responsibility? In short, the government of the United States, knowing all the facts, and by recognising the counsel employed, having recognised the power of the delegation to employ counsel, has made itself singly responsible for the fraudulent act of these people. It suggests, teaches, and sustains, in an act which it knows to be dishonest, its wards and pupils whom it is bound by the most solemn obligations to instruct and train in every Christian virtue.

I appeal to you, sir, to avert from our government and country for the present, and enable Congress to avert forever, the stigma which cannot but attach to the consummation of this outrage. On behalf of A. and J. E. Kendall, and Colonel S. C. Stambaugh, whose aggregate claims amount to ten per centum on the appropriations for the benefit of the western Cherokees or Old Settlers, I request and entreat an official order to Colonel Drennen, directing him to withhold that amount to await the further action of Congress. Surely, the nature of the case as now understood will justify, if it do not require this exercise of power on your part.

And in view of the wrong now about to be consummated, unless prevented by your prompt interposition, it will not be deemed amiss in me most respectfully to repeat the protest heretofore made against being sent to the Cherokee country to collect moneys which by contract are payable at Washington, and again give notice that we, the counsel of the western Cherokees, look to our government for the payment of our claims and a reimbursement of all expenses, losses, and damages which have been or may be occasioned to us by its own wrong in this behalf.

Permit me to suggest, that should the department favor us with the order solicited, notice thereof be sent by telegraph, to be mailed from Nashville and Memphis, otherwise it may be too late.

With high consideration, your obedient servant,

AMOS KENDALL.

Hon. A. H. H. Stuart,
Secretary of the Interior.

No. 11.

Department of the Interior,
Office Indian Affairs, July 17, 1851.

Sir: With reference to the letter of the Hon. A. Kendall of the 19th ult., addressed to, and referred here by you, I have the honor to enclose, herewith, an extract from a letter of instructions from this office, bearing date the 16th October last, and addressed to Superintendent Drennen, relative to the payment of attorneys' fees out of the "per capita" money to be paid to the "Old Settler" Cherokees.

I also beg leave to call your attention to the following extract from a letter addressed to the superintendent aforesaid on the 30th May last, by the Commissioner of Indian Affairs, from which you will perceive that he, the superintendent, was directed to conform to the instructions given him in October last: "The instructions heretofore given to you in reference to this subject, so far as consistent with what is herein contained, you will consider in full force."

The foregoing is submitted with a view to the application of Mr. Kendall, and for your information as to the instructions heretofore given relative to the payment of all such claims.

The letter of Mr. Kendall is herewith returned.

Very respectfully, your obedient servant,

CHARLES E. MIX,
Acting Commissioner, ad interim.

Hon. A. H. H. Stuart,
Secretary of the Interior.

[Extract referred to in No. 11.]

"There is a subject connected with this business to which the attention of this office has been called, and which I deem it proper to state for your information and action. It relates to contracts made by the Old Settlers in their representative capacity, which are on file in this office. These people, it appears from evidence filed in this office, first memorialized government in April, 1842, respecting their claim against the United States, which was afterwards recognised by the department in April, 1846, and led to the treaty of 1846. The appropriation now made by Congress is to carry out the provisions of that treaty, so far as the Old Settlers are affected. These people had not at that time or at any subsequent period a national character, and consequently they had no national funds at their disposal. The files of the department show that they were in a distressed condition, and destitute of means necessary to commence the prosecution of a claim involving much difficulty and doubt as to its ultimate success. They were, therefore, compelled to organize a collective or *quasi* national capacity, and pledge the fund that might be recovered from the United States, to procure counsel to aid them, and means necessary to pay their delegates or defray other expenses consequent upon the prosecution of said claim. At their first convention on the 16th April, 1842, they elected a delegation to proceed to Washington, invested with full authority to employ counsel and create other liabilities necessary to secure success upon the terms above stated. Contracts were entered into in the most solemn manner by the only power these people could create. These contracts were confirmed and reconfirmed by every delegation up to the treaty of 1846. The delegation who signed that treaty, and afterwards agreed to the amendments made by the Senate, thus making their act binding on their people, in certifying the appointment of Samuel C. Stambaugh, esq., as their counsel, declare, 'that all contracts or liablilities incurred by them or any of their predecessors, for the benefit of the western Cherokees in their aggregate capacity, shall be paid out of any moneys which have been or may hereafter be found due to the said western Cherokees, or Old Settlers, and the Secretary of War is hereby authorized to cause the same to be paid.' This certificate is dated August 12, 1846, four days after the ratification of the treaty. The contract upon which that certificate is based was entered into on the 16th April, 1842, and was renewed and signed by the same delegation who made the treaty of 1846, on the day they met the United States commissioners in council, viz: 8th July, 1846. It agrees to pay the said Stambaugh at the rate of five per cent. on all moneys which may be recovered from the United States for the Old Settler Cherokees, with two thousand five hundred dollars in addition to cover his expenses, &c., in pursuance of the resolution appointing him, adopted at the convention of April 16, 1842. The contract concludes as follows: 'and the Secretary of War, Commissioner of Indian Affairs, and accounting officer of the United States treasury, are hereby authorized and empowered, and enjoined, to fulfil this contract out of any moneys that may hereafter be found due the Old Settlers aforesaid.' This contract contains also this stipulation—that if nothing be obtained by the Old Settler Cherokees, the counsel could have no claim upon them whatever; thus, that all his time and expenses must be a loss to him.

"The above, with another contract of like binding import entered into by the delegation of old Cherokees, with Amos and John E. Kendall, in July, 1843, and also reconfirmed by the delegation who signed the treaty of 1846, are fully set forth in the report from this office to the Secretary of War of 8th February, 1849, in reply to a resolution of the Senate of the United States, of 18th January, 1849, requiring the opinion of the department in regard to existing claims against the Old Settler Cherokees, within the knowledge of the department. (See report, Ex. Doc. No. 28, Senate, 2d session 30th Congress, herewith.)

"In reference to this subject I also refer you to a memorial of Wm. S. Coody and John Drew, representatives of the Old Settlers, dated 31st of January, 1849, addressed to the Senate and House of Representatives. (Doc. H. R. Miscellaneous, No. 41, second session thirtieth Congress.) Also a copy of a letter from W. S. Coody to the Commissioner of Indian Affairs, dated 22d August, 1848; together with the copy of a letter from Messrs. Coody and Drew, dated March 17, 1849, requesting the Department of the Interior to recognise S. C. Stambaugh as counsel and agent for the western Cherokees or Old Settlers.

"The above facts have been thus briefly brought to your notice, on the request made of this office, for the purpose of affording you all the information necessary to an intelligent understanding of the pledges and promises of the Old Settlers or western Cherokees, in the premises, and of the obligation they are under to comply with the fair and honest contracts publicly and solemnly entered into by their chosen representatives, for their benefit in their collective capacity.

"This is made necessary in consequence of a proviso contained in the act of appropriation, 'that no part of the money shall be paid to any agent of said Indians, or to any other person than the Indian or Indians to whom it is due.' Although this proviso does not make the money payable *per capita*, and although it may not have been the intention of the national legislature to abrogate or interfere with contracts which have been recognised as valid by the proper officers of the government of the United States, and by the representatives of the Indian party interested; yet the department cannot look behind the law and the treaty, and withhold any portion of the money appropriated to comply with the desire of these people, by applying it to the payment even of their just debts, unless directed to do so by a judicial decision, which has not been asked for. Under these circumstances, the office can only advise that after convening a council of western Cherokees or Old Settlers, for the purpose of making preliminary arrangements preparatory to the payment of the money, you will request them to select a committee of such of their number as you shall be satisfied are intelligent and judicious men. Before this committee you can present all the information in your possession, that full and impartial justice may be done to all the parties interested.

"All claims preferred against them in their collective capacity, either upon written contracts or otherwise, should undergo the strictest scrutiny; the nature and extent of the contracts should be thoroughly examined for the purpose of ascertaining whether they were fairly and honestly made for the benefit of the whole people, and the terms fully complied with by the other contracting party. If this is made manifest by sufficient evidence, it would seem that the preservation of the integrity of the Indians denominated the Old Settler party would dictate and direct their payment. But whilst justice requires that all just and honest debts should be paid, (many of which have been contracted by their delegations in Washington, and the Cherokee nation,) it is the duty of the government, as trustee, to protect them from the payment of doubtful or fraudulent claims; and in no case can debts contracted by individual Indians be paid out of the aggregate due, and to be divided among the whole people."

No. 12.

Department of the Interior,
July 18, 1851.

Sir: I have examined the instructions which you propose to give to Mr. Drennen, in regard to the payment to be made to the Cherokees, and cordially approve them. You will please add to them that I have carefully examined the claims of Messrs. Thompson, Harris, and Kendalls against the Indians for professional services, and, from the evidence before me, I am satisfied that they are just and reasonable and should be paid. If I had possessed the legal authority I should have felt no hesitation in ordering their payment; but as it was at least questionable whether I had the power to do so, I determined to refrain from such an interference. I regretted this the less, however, because I am persuaded the Indians will be disposed to fulfil their obligations in good faith when they are properly explained by Mr. Drennen.

Very respectfully, your obedient servant,
ALEX. H. H. STUART,
Secretary.

Charles E. Mix, Esq.,
Acting Commissioner of Indian Affairs.

No. 13.

Department of the Interior,
Office of Indian Affairs, July 21, 1851.

Sir: In your instructions of October 16, 1850, directions are given in reference to the claims of Samuel C. Stambaugh, and Amos and John E. Kendall, esqrs., against the "Old Settler" Cherokees, for services rendered by them to said Indians in securing the payment of money due them by the United States. These instructions were submitted to the Secretary of the Interior, who, by a communication addressed to this office of the 18th inst., "cordially approves them," and further states in it, "You will please add to them that I have carefully examined the claims of Messrs. Thompson, Harris, and Kendalls against the Indians [emigrating and Old Settler Cherokees,] for professional services, and, from the evidence before me, I am satisfied that they are just and reasonable and should be paid. If I had possessed the legal authority I should have felt no hesitation in ordering their payment; but as it was at least questionable whether I had the power to do so, I determined to refrain from such an interference. I regretted this the less, however, because I am persuaded the Indians will be disposed to fulfil their obligations in good faith when they are properly explained by Mr. Drennen."

In regard to the claims of Thompson and Harris, I have to state that they will form the subject of a separate communication to you, when the money for payment to the Indians who emigrated under the treaty of 1835 shall have been forwarded.

Very respectfully, your obedient servant,

C. E. MIX,

Acting Commissioner, ad interim.

JOHN DRENNEN, Esq.,
Superintendent Indian Affairs, Van Buren, Arkansas.

No. 14.

WASHINGTON, *July* 6, 1851.

SIR: I learn from the Cherokee country that all sorts of falsehoods are in circulation among the Indians, with the view of preventing the western Cherokees from paying their counsel, and that among other things it is alleged that we delayed the recent revised instructions by our efforts to procure payment of our commissions here.

Will you be good enough to state to me, in reply to this note, whether such be the fact; and whether, on the contrary, we have not urged, from the beginning, speedy action on the subject of the instructions, without waiting for a decision in relation to payment of our compensation.

We shall need all the moral weight which the government can give us to obtain any thing from those people, and we despair of justice unless they are given to understand that our commissions will not be paid over to them until our rights are decided upon by the judiciary or by Congress. Whatever is done for us must be done quickly to be of any avail; and it must be understood that by going to the Indians and seeking their consent, we do not exonerate the government from responsibility to us if this money or any portion of it is paid over to the Indians after the full notice of our claim, which has been repeatedly given, as well for the sums paid over as for all costs and expenses to which we may have been subjected by compelling us to solicit justice from individual Indians, who are already bound by the acts of their authorized delegation. I find it difficult to speak with decorum when I think how the government denies to its citizens the benefit of an authority which it deemed all-sufficient for its own purposes, and practically leagues with the dishonest among the Indians, to cheat out of all compensation those whose labors awakened it to a sense of justice and obtained partial indemnity to the victims of its policy.

But I forbear; I have no doubt that the present Secretary of the Interior, and yourself will do all that your sense of superior duty will permit, to prevent and redress this flagrant wrong.

With high consideration, your obedient servant,

AMOS KENDALL.

CHARLES E. MIX, Esq.,
Acting Commissioner of Indian Affairs.

No. 15.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, *July* 19, 1851.

SIR: Your letter of the 6th instant, in which you state, "I (you) learn from the Cherokee country that all sorts of falsehoods are in circulation among the Indians with the view of preventing the western Cherokees from paying their counsel, and that among other things it is alleged that we delayed the recent revised instructions by our efforts to procure payment of our commissions here: Will you be good enough to state to me, in reply to this note, whether such be the fact? and whether, on the contrary, we have not urged, from the beginning, speedy action on the subject of the instructions, without waiting for a decision in relation to payment of our compensation"—has been received. In reply to which I have to state, that the charge that the delay of the recent revised instructions was occasioned by your efforts to procure payment of your commissions is wholly without foundation, and that, on the contrary, from the beginning you have urged speedy action upon the subject of the instructions without waiting for a decision in relation to payment of your compensation.

In regard to the suggestion in your letter, that you need all the moral weight the government can give you to secure your commissions from the Cherokees, I enclose you a copy of a letter from the Secretary of the Interior of the 18th instant, a copy of which will also be forwarded to superintendent Drennen.

Very respectfully, your obedient servant,

C. E. MIX.
Acting Commissioner, ad interim.

AMOS KENDALL, Esq.,
Washington City, D. C.

No. 16.

VAN BUREN, *July* 24, 1851.

SIR: At the request of various citizens of the United States who are claimants for money advanced, and now due them by that party of Cherokees known as the Old Settler party, for which they had in their *quasi* capacity pledged in the most solemn manner their faith and credit—we address you in behalf of the great injustice and wrong that they, as well as ourselves, are confident will be suffered by them, if they should be compelled to accept, on their part, the awards of the commissioners now adjudicating claims against the "Old Settler" party, in full discharge of their demands against them.

In justice to them, as well as the department of the Government over which you preside, we beg leave to say that the claimants attended at the place appointed for adjudication, by previous notice given on Monday, the 14th of July, 1851, and remained there until the 22d, using every effort for the despatch of their business, when they became satisfied that the committee had no intention of proceeding in the discharge of their duties until after public opinion in the nation should become settled as to the policy of paying their just debts, and also as to what amount should be set apart for that purpose. The committee was not organized until Monday the 21st, owing to the failure of the members to attend, so as to constitute a full board; and when organized, they gave notice that they were ready to register claims, but not to adjudicate. After this intelligence, most of the claimants left for their homes; prior to this, protests had been circulated for signature amongst the Indians of that party, by those opposed to the payment of claims out of this fund, and for the avowed object of deterring the committee from action, calling upon the people of this party to hold meetings in their respective districts, and appoint delegates from the same, to attend a convention upon the 26th day of July, at Tahlequah, for the purpose of appointing a new committee of adjudication of eight persons, one from each district in the nation. What that meeting may by their action effect, of one thing we are satisfied—that the present committee would not act definitively until their action shall be known, and public opinion seems to be that they will disregard all contracts and obligations heretofore made, and award such sums or amounts of money to claimants as their feelings may dictate. These claimants have no remedy if this money should be paid to the Indians, upon the report of the committee of adjudication, by the superintendent; and they will thereby become severe sufferers, and as citizens of the United States they call for, and have the right to ask of the Government, its interference in their behalf, to protect their rights and interests. To effect this, they would ask, if not incompatible with the discharge of your duties, that you direct a suspension of the payments of this money until justice be done the claimants. This relief must be immediate, as the committee now taking the census will be ready to report to the superintendent the census roll by the first of September, after which he will proceed to pay out this fund *per capita*, under the treaty. An early reply is solicited.

Very respectfully, your obedient servants,

OGDEN & LUCE.

Referred to Commissioner of Indian Affairs.—Department of the Interior, August 15, 1851.

No. 17.

VAN BUREN, *July* 27, 1851.

SIR: At the request of the treaty party of Cherokees, and of their attorneys, we protest against any payment of the fund now in the hands of Col. John Drennen, superintendent of Indian affairs at Van Buren, Arkansas, for distribution among the "Old Settlers," or western Cherokees, until some provision has been made for the repayment of $16,000, advanced on their account at Washington, of funds belonging to the treaty party, together with the interest on that amount, from the date of the advance until paid.

The circumstances under which this indebtedness arose, were these:—Shortly after the ratification of the treaty of 1846, Messrs. Corcoran & Riggs loaned the different Cherokee delegations $60,000, with the understanding that it was to be repaid out of the first moneys appropriated under the treaty. A formal agreement to that effect, under the express sanction of the then Secretary of War, was signed by all the delegates who were parties to the treaty. Out of this money ($60,000) the "Old Settlers" delegation received $20,000.

The whole amount of the loan was repaid to Messrs. Corcoran & Riggs, out of an appropriation made in 1847 for the treaty and Government parties, including in the payment the $20,000 loaned the "Old Settlers." One-half the sum thus paid for them was taken from the funds of the treaty party, and has never been returned.

A statement of the indebtedness was presented, a short time since, to the committee charged with the adjudication of claims on the "Old Settlers" fund. The committee has not, so far, shown any disposition to satisfy the demand, and there is apparently no probability that it will be allowed.

We do not consider it necessary to enlarge on the gross injustice of hesitating to refund an advance of this kind; made, as is well known, to defray expenses which were a legitimate charge on the "Old Settlers" fund, and made on a solemn pledge of those who were fully empowered to make such pledges. It is sufficient for our purposes, we apprehend, to call your attention to the fact, that the amount now claimed was paid to Messrs. Corcoran & Riggs, by the Indian Department, out of the funds of the treaty Party; that the treaty party confidently expected the Indian Department to protect its interests by reserving enough for the purpose out of the "Old Settlers" fund; and that if the Old Settlers refuse to pay this just debt, the treaty party will look, as a matter of course, to the government for indemnity. As this would involve delay, we trust that you will concur with us in the propriety of withholding the sum of $10,000, with interest from the 17th day of August, A. D. 1846, and further direct the superintendent to apply the same to the payment of the money now justly due by the Old Settlers to the treaty party of Cherokees.

We have also addressed a similar communication to Col. John Drennen, superintendent of Indian affairs. These steps we have deemed it our duty, in the discharge of the trust and confidence reposed in us by the treaty party, as their attorneys, for the protection of their rights and interests, to take.

Believing that to your department alone this party of Cherokees are now dependent for relief,

Very respectfully, your obedient servants,

OGDEN & LUCE,
Attorneys for Treaty Party.

Referred to Commissioner of Indian Affairs.—Department of the Interior, August 15, 1851.

DEPARTMENT OF THE INTERIOR,
Washington, August 15, 1851.

GENTLEMEN: Your letter of the 27th ultimo, transmitting your protest, as attorneys for "the treaty party of Cherokees," against any payment of the funds now in the hands of "Col. John Drennen, superintendent, &c., &c.," at Van Buren, Arkansas, for distribution among the Old Settlers, or western Cherokees, has been received and referred to the Commissioner of Indian Affairs for his attention.

I am, &c.,
W. A. GRAHAM,
Acting Secretary.

Messrs. OGDEN & LUCE,
Van Buren, Arkansas.

No. 18.

VAN BUREN, *July* 29, 1851.

SIR: Enclosed we have the honor to forward, for your information, a copy of the proceedings of a convention of the Old Settlers, or western Cherokees, held at Tahlequah on the 26th inst., to which we respectfully call your attention.

You will observe that the convention specifies the sum of $30,000 for the payment of debts chargeable to the Old Settlers fund.

The debts legitimately chargeable to that fund exceed $130,000. We represent, as attorneys, many of the creditors, and in their behalf we request you to cause the disbursement of the fund to be suspended long enough to enable the creditors to lay their case before Congress, in the event of a final refusal on the part of the Old Settlers to pay their just debts.

Many of these demands are for money, food, and clothing furnished these western Cherokees, who were specially charged by their people, in convention, with the prosecution of the particular claim which this very fund was intended to liquidate; furnished, moreover, for the express purpose of enabling them to prosecute the claim, and furnished at a time when they were driven from their homes by the Cherokee government on account of their connexion with the claim.

Three-fourths of the debts are due to citizens of the United States. Creditors of this description feel confident that Congress will not refuse to interfere for the protection of demands which would have been paid without hesitation, but for the clause in the appropriation requiring the distribution of the fund *per capita*, which enables a small minority to prevent the payment of any debt, no matter how just, or how large the majority that sanctions it.

This is clearly illustrated by various occurrences within the last six months. On the 17th of March a very large meeting of Old Settlers was held at Talontuskee. More than half of the heads of families of that party were present. Every district was fully represented. Resolutions were passed unanimously for the appointment of a committee, with full power to adjudicate all claims that might be presented, without any restriction, as to the aggregate of allowances. It was also resolved unanimously, that the decisions of a majority of the committee on claims should be final.

Thus empowered, the committee assembled on the 14th of July. They remained in session one week without doing anything, and then intimated that they would not act until the last of the ensuing week, fixing a time subsequent to the day set for the meeting of the convention, whose proceedings are enclosed.

In the mean time, two meetings had been held, at which resolutions were passed adverse to the payment of the debts in full. We send herewith (in the Cherokee Advocate) one set ot these resolutions. You will see that one of them takes the broad ground that if the people should be willing to give (not pay) a small amount to pay *just claims*, the *amount shall be limited.*

These resolutions, together with threats from various quarters of personal violence and bloodshed as the penalty for allowing the full amount of what was justly due, evidently had the effect of intimidating the committee, and of causing a postponement of any action until after the result of the Tahlequah convention should be known.

That convention, you will see, consisted of fifteen persons. Two districts were not represented at all. Those present from a third district expressly stated that they had no authority whatever to act as delegates.

On the other hand, over three hundred were present at Talontuskee on the 17th March; two hundred and twenty of whom were registered as they voted. Not only every district, but every settlement of western Cherokees, was fully represented. Yet in the face of all these facts, the committee has already intimated that it considers itself bound to conform to the views of the Tahlequah convention.

The indignation of the community in this part of Arkansas has been aroused to a very great degree, by the unblushing manner in which some of the Indians propose to repudiate claims of the most sacred character. Two of our delegation in Congress, Messrs. Johnson and Sebastian, addressed a very strong letter to the committee, urging the payment in full of all that was justly due and chargeable upon the common fund. Thus far, however, all remonstrances have been fruitless.

In consideration of the fact, that those citizens of the United States who are interested in this matter are, as it now stands, completely at the mercy of the Indians, and have no legal redress whatever, we hope you will so far interpose your authority as to give them an opportunity of laying their case before Congress, by suspending the payment of a sufficient portion of the fund to cover their demands.

Very respectfully, your obedient servants,

OGDEN & LUCE.

Hon. A. H. H. Stuart,
Secretary of the Interior.

P. S. This letter has been read to Colonel Stambaugh, who desires us to say for him, that he earnestly joins in the request to the department to suspend the payment of the money until some action can be had by Congress in behalf of the claimants, unless in the mean time the money can be recovered by some other process, which may be suggested by the department at Washington.

Yours, &c.,

OGDEN & LUCE.

[Referred to in No. 18.]

A convention of the deputies of the "Old Settlers" or western Cherokees, from the different districts in the nation, met at Tahlequah on the 26th July, 1851, in conformity with the invitation of the citizens of Saline district, expressed in a certain preamble and resolution of a meeting held in said district on the 8th instant, and organized themselves by calling John Thornton, of Going Snake district, to the chair, and appointing William L. Vann secretary.

Deputies present from Going Snake district.

JOHN THORNTON,
MOSES ALBERTY,
CORNELIUS WRIGHT.
Presented their credentials and authority.

Delaware District.

JOEL M. BRYANT,
JACOB ALBERTY,
JAMES DUNCAN.
Presented their credentials.

Saline District.

DAVID ROWE,
JOSEPH V. CLYNGING,
WILLIAM ALBERTY.
Presented their credentials.

Tahlequah District.

RICHARD CERILY,
JACOB HARNAGE,
JACKSON TINER.
Presented their credentials.

Canadian District.

AH-TOK-HEE, *alias* LEGGINS,
WILLIAM ARNOLD.

Illinois District.

ALEXANDER FOREMAN.

Skin Bayou and Flint districts not represented.

On motion of John Thornton, the following resolutions were *unanimously* adopted:

Resolved by this convention, That the "Old Settler" Cherokees, by their deputies in convention assembled, do not repudiate the payment of any past claims held by any person or persons against them as a party, but desire the full discharge of them, and recommend a specified amount to be set apart for that purpose.

Be it further resolved, That the sum of *thirty thousand dollars be, and the same is hereby set apart, out of the per capita money, for that purpose.*

JOHN THORNTON, *Chairman.*

Attest: WM. L. VANN, *Secretary.*

This copy has been furnished us by the kindness of Colonel H. Stambaugh, by whom it was received this evening, July 29, 1851, since which we thought it advisable to address you another communication.

Yours respectfully,

OGDEN & LUCE.

Hon. A. H. H. Stuart,
Secretary of the Interior.

Referred to Commissioner of Indian Affairs.—Interior Department, August 15, 1851.

No. 19.

Choctaw Agency, Arkansas,
August 11, 1851.

Sir: I have the honor to enclose, herewith, a communication from Messrs. Ogden and Luce, in relation to a claim of $10,000 presented by the treaty party of Cherokees against the Old Settlers.

The instructions which I have received from your office relative to the payment of the money now in my hand for the Old Settlers do not permit me to pay any claims against the party, except such as have been adjudicated and allowed by the committee appointed for that purpose. I have conversed with that committee in reference to this claim, and find them indisposed to make provision for its payment; it is therefore forwarded for your action. The census of the party is nearly completed. The rolls will be made out and the payment commenced by the last of September.

Very respectfully, your obedient servant,

JOHN DRENNEN,
Superintendent of Indian Affairs.

Luke Lea, Esq.,
Commissioner Indian Affairs, Washington city.

[Referred to in No. 19.]

Van Buren, Arkansas,
July 26, 1851.

Sir: At the request of the treaty party of Cherokees, and as their attorneys, we protest against any payment of the fund now in your hand for distribution amongst the Old Settlers or western Cherokees, until some provision has been made for the payment of $10,000 advanced on their account, at Washington, out of funds belonging to the treaty party, together with the interest on that amount from the date of the advance until paid.

The circumstances under which this indebtedness arose, were these: Shortly after the ratification of the treaty of 1846, Messrs. Corcoran and Riggs loaned the different Cherokee delegations $60,000, with the understanding that it was to be repaid out of the first moneys appropriated under the treaty. The formal agreement to that effect, under the express sanction of the then Secretary of War, was signed by all the delegates who were parties to the treaty. Out of this sum of $60,000, the Old Settler delegation received $20,000. The whole amount of the loan was repaid to Messrs. Corcoran and Riggs, out of an appropriation made in 1847 for the treaty and Government parties; including in the payment the $20,000 loaned the Old Settlers. One-half the sum thus paid for them was taken from the funds of the treaty party, and has never been returned.

A statement of this indebtedness was presented a short time since to the committee charged with the adjudication of claims on the Old Settlers fund. The committee has not so far shown any disposition to satisfy the demand, and there is apparently no probability that it will be allowed.

We do not consider it necessary to enlarge on the gross injustice of hesitating to refund an advance of this kind, made, as is well known, to defray expenses which were a legitimate charge on the Old Settlers fund, and made under a pledge by those who were fully empowered to make such pledges. It is sufficient for our purpose, we apprehend, to call your attention to the fact that the amount now claimed was paid to Messrs. Corcoran and Riggs by the Indian Department, out of the funds of the treaty party—that the treaty party confidently expected the Indian Department to protect its interests, by reserving enough for the purpose out of the Old Settlers fund; and that if the Old Settlers refused to pay this just debt, the treaty party will look, as a matter of course, to the Government for indemnity.

As this would involve delay, we trust that you will concur with us in the propriety of withholding the sum of $10,000, with interest from February 1, 1847, until the matter can be laid before the proper authority at Washington.

Very respectfully, your obedient servants,

OGDEN & LUCE,

Attorneys for treaty party.

Colonel JOHN DRENNEN,

Superintendent Indian Affairs, &c., Van Buren, Arkansas.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs, September 11, 1851.

SIR: Your letter of the 11th ultimo, in which you enclose a copy of a communication addressed to you by Messrs. Ogden & Luce, attorneys for the treaty party of Cherokee Indians, in relation to the payment of a claim for $10,000, held by that party against the Old Settlers, or western Cherokees, has been received.

In your instructions of 30th May last, in regard to the payment of the money due the Old Settlers or western Cherokees, you were apprized of the decision of the Attorney General, that the money should be paid *per capita*, and informed that your instructions of a previous date were confirmed, so far as consistent therewith.

The department will be gratified should the Indians voluntarily satisfy all their just liabilities. It has, however, no power to compel them to do so, and in no event can it allow the payment of the money to be postponed or delayed by any claim or demand whatever.

Very respectfully, your obedient servant,

L. LEA, *Commissioner.*

JOHN DRENNEN, Esq.,

Superintendent Indian Affairs,

Choctaw Agency, West of Arkansas.

No. 20.

Committee Rooms, at Mrs. Bell's, Illinois Court-House,
Cherokee Nation, August 18, 1851.

Sir: The committee appointed to adjudicate claims existing against the "Old Settlers," or "western Cherokees," in conformity with the instructions issued to you from the Indian Department at Washington, dated October 16, 1850, very respectfully report, that after the organization of the committee on the 30th day of June, 1851, under your superintendence, by the appointment of Joseph M. Starr president, and John L. McCoy secretary, and substituting A. D. Wilson in the place of D. R. Coody, who had resigned on account of ill health, it adjourned until the 14th day of July, for the purpose of notifying the claimants to appear and present their claims, which was done through the public journals.

On the 14th July the committee reconvened and entered upon the duties assigned it. Mr. Wolf, a member of the committee, not presenting himself, the chairman addressed him by letter, requesting his attendance, when, on the 19th July, he tendered his resignation in writing; whereupon the honorable Smith Thornton was appointed in his place, which appointment you confirmed.

Thus organized with a full committee, the examination and adjudication of claims commenced, and has steadily progressed. After a careful and laborious examination of all the claims presented, with the proofs and allegations adduced to support them, the committee on this day has completed the examination and adjudication with which it was charged, and nothing is now left to be done but to complete the records.

Herewith two papers are enclosed, which give the amount of the labor performed by the committee. One of these papers, marked "A," exhibits a *schedule* of all the claims docketed for adjudication, with the names of the claimants, the class and nature of their claims, the amount awarded in whole or in part, and to whom awarded, with reasons for rejection.

The other paper, marked "B," exhibits a statement showing only the amount actually awarded, with the class and character of the claim upon which allowance is made. In this paper the names of the persons who are to receive the money precede, in the same line, the amount awarded.

The whole amount of claims presented is $161,522 83½. Of this amount, the sum of $68,420 11 has been allowed, and $93,102 72 rejected.

In concluding their report, the members of the committee have only to say that they have faithfully, impartially, and conscientiously discharged their duty, according to the best of their abilities. The duties assigned to them were of an arduous, delicate, and responsible character, and if they have erred it must be charged to their judgment and not to their intentions.

In entering upon their duties, the committee adopted a rule which required every claimant presenting a claim, based either upon written or verbal contracts, or obligations, to prove satisfactorily that the contract or obligation was faithfully and properly made, and that the Indian party had the power to enter into them on behalf of the "Old Settler" Cherokees in their *collective* or *quasi national character*, so as to make them binding on their *whole people;* that they must also prove by competent testimony that the services required to be rendered, subsistence furnished, and any other assistance named in those contracts or obligations, were calculated to benefit the whole body of Old Settlers, and not individuals composing that body; and, above all, that positive proof would be required to show that the claimants had fully complied with their part of the contracts, or with the requirements of an obligation according to their plain, common sense meaning, in spirit and letter.

The committee has strictly adhered to this rule throughout its investigations. In all cases where respectable testimony was adduced to sustain a claim subjected to the above ordeal, it was allowed. In all cases where the claimant failed to do so, it was disallowed. Every member of the committee entertained and expressed an anxious desire to do full justice to the *claimants* on the one hand, and to the *Indian party* on the other; and thus, in the language of your instructions from the Indian Department at Washington, show "*that the preservation of the integrity of the Indians denominated the Old Settler party,*" was the governing motive of their action.

Trusting that this report, embracing the two papers marked A and B, will receive your sanction and approval,

We remain your obedient servants,

JOSEPH M. STARR, *President.*
ELLIS F. PHILLIPS,
RICHARD DREW,
SMITH THORNTON.

Attest: SAMUEL M. TAYLOR, *Secretary.*

P. S.—A. D. Wilson not present.

The committee request that Colonel Drennen will be kind enough to let them have the enclosed paper marked A, for the purpose of exhibiting it, if necessary, at the council to be held at Talontusky, on the 25th instant, when it will be returned.

J. M. STARR, *President.*

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
Van Buren, Arkansas, October 20, 1851.

The above is a true copy from the original letter now on file in this office.

SAMUEL M. WILLARD,
Clerk for Superintendent Indian Affairs.